

No. 15184

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United States  
Court of Appeals  
for the Ninth Circuit

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PELTA FURS,

Petitioner,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

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Transcript of Record

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On Petition for Review of an Order  
to Cease and Desist

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## INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

|   | PAGE |
|---|------|
| Answer .....  | 24   |
| Complaint .....   | 3    |
| Counsel, Names and Addresses of .....                             | 1    |
| Exhibits, Commission's:   |      |
| No. 12—Advertisement of Pelta Furs.....                           | 136  |
| 13—Advertisement of Pelta Furs.....                               | 137  |
| 14—Advertisement of Pelta Furs.....                               | 138  |
| 15—Advertisement of Pelta Furs.....                               | 139  |
| 16—Advertisement of Pelta Furs.....                               | 141  |
| Findings of Facts, Conclusions and Order ....                     | 38   |
| Conclusions .....   | 48   |
| Findings of Facts .....   | 39   |
| Opinion on Appeal of Chairman Gwynne.                             | 68   |
| Opinion on Appeal from Initial Decision.                          | 58   |
| Order .....   | 52   |
| Notice of Intention to Appeal .....                               | 37   |
| Petition for Review of Order of Federal Trade<br>Commission ..... | 143  |
| Statement of Points, Appellants' .....                            | 153  |

INDEX

PAGE

Transcript of Proceedings ..... 72

Witness:

De Gorter, Jacques

—direct .....76, 84, 103

—cross ..... 121

—redirect ..... 133

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United States of America,  
Before Federal Trade Commission

Docket No. 6297

In the Matter of:

JACQUES DE GORTER and SUZE C. DE  
GORTER, as Individuals and as Co-Partners  
Trading as PELTA FURS

### COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act and the Fur Products Labeling Act, and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Jacques De Gorter and Suze C. De Gorter, as individuals and as co-partners trading as Pelta Furs, hereinafter referred to as respondents, have violated the provisions of said acts and the rules and regulations promulgated under the Fur Products Labeling Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

Paragraph One: Respondents Jacques De Gorter and Suze C. De Gorter are individuals trading as Pelta Furs, with their office and principal place of business located at 437 West Seventh Street, Los Angeles, California.

Paragraph Two: Individual respondents Jacques De Gorter and Suze C. De Gorter have, for several



years last past, been engaged in the purchase, sale and distribution of fur products including fur coats, jackets, stoles and related fur garments. Respondents cause and have caused the aforesaid fur products, when sold, to be transported from their place of business in the State of California to purchasers thereof located in various places other than in the State of California. Respondents maintain, and at all times mentioned herein have maintained, a course of trade in said products, in commerce, among and between the various States of the United States. [2\*]

Paragraph Three: Subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, the respondents have introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce, and have sold, advertised, offered for sale, transported and distributed fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product," are defined in the Fur Products Labeling Act. Certain of said fur products have been misbranded, falsely advertised and falsely invoiced in violation of the Fur Products Labeling Act and of the rules and regulations promulgated thereunder.

Paragraph Four: Certain of said fur products were falsely and deceptively advertised, in violation of the Fur Products Labeling Act, in that respondents caused the dissemination in commerce, as

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

“commerce” is defined in the Fur Products Labeling Act, of certain advertisements concerning said products by means of newspapers and by various other means, which advertisements were not in accordance with the provisions of Section 5 (a) of the Fur Products Labeling Act and of the rules and regulations promulgated under said Act, and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale of said fur products.

Paragraph Five: Among and including the advertisements as aforesaid, but not limited thereto, were advertisements of respondents which appeared in various issues of the “Los Angeles Examiner,” “Los Angeles Times,” and “Los Angeles Herald and Express”; publications having wide circulation in the State of California and in the adjacent areas of other States of the United States. Certain, but not all, of said advertisements are referred to and described in Paragraphs Seventeen through Twenty hereof and are incorporated herein by reference.

By means of the aforesaid advertisements and through respondents’ acts, practices and representations with respect to their use of price tags, as referred to in Paragraphs Seven and Eight hereof and incorporated herein by reference, and by other means not referred to specifically herein, respondents, directly or by implication, have falsely and deceptively:

a. Misrepresented prices of fur products as having been reduced from regular or usual prices,

where the so-called regular or usual prices were in fact fictitious, in that they were not the prices at which said merchandise was usually sold by respondents in the recent regular course of their business, in violation of Rule 44 (a) of the aforesaid rules and regulations. [3]

b. Misrepresented, by means of comparative prices and other statements as to "value" not based on current market values, the amount of savings to be effectuated by purchasers of said fur products, in violation of Rule 44 (b) and (c) of the aforesaid rules and regulations;

c. Misrepresented the grade, quality or value of certain of said fur products by the use of illustrations depicting higher priced or more valuable products than those actually available for sale at the advertised selling price, in violation of Rule 44 (f) of the aforesaid rules and regulations.

d. Misrepresented, in violation of Rule 44 (g) of the said rules and regulations, fur products as being:

1. From the stock of a business in the state of liquidation; and

2. From the stock of a business consolidated with that of a famous mink manufacturer.

Respondents, in making the pricing claims and representations referred to in subparagraphs (a) and (b) hereof, and by the acts, statements and representation referred to in Paragraphs Seven and Eight hereof that have been incorporated herein by reference, failed to maintain full and adequate records disclosing the facts upon which



such claims and representations were purportedly based, in violation of Rule 44 (e) of the said rules and regulations.

Paragraph Six: Certain of said fur products were falsely and deceptively advertised in that certain of the advertisements disseminated in commerce as aforesaid by respondents, including, but not necessarily limited to those referred to or incorporated by reference in Paragraphs Four and Five hereof, failed to set forth the information required by Section 5 (a) of the Fur Products Labeling Act, and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Certain of said advertisements failed to disclose:

a. The name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations; [4]

b. That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact;

c. The name of the country of origin of imported furs contained in such fur products.

Paragraph Seven: Certain of said fur products were falsely or deceptively advertised by respondents by means of representations on price tags affixed to fur products, and by oral representations made by respondents or their sales people and by other means, which advertisements contained forms

of misrepresentation or deception, directly or by implication, with respect to such fur products, in violation of Section 5 (a) of the Fur Products Labeling Act, and the rules and regulations promulgated thereunder.

Paragraph Eight: The price tags referred to in Paragraph Seven hereof contained fictitious prices and misrepresented the value of such products, in that the purported selling price and representation as to value contained thereon, in numerals and symbols clearly distinguishable by members of the purchasing public, quoted a price at which respondents did not generally expect to sell such product, nor at which such product was being generally sold by respondents in the recent regular course of their business.

On the contrary, the said quoted prices were primarily for bargaining purposes; the actual price at which respondents generally expected to and did sell such products, during the recent regular course of their business, was a lower price, as set forth in a series of coded prices on said price tags. One of said coded prices, the higher, represented a price at which respondents, and certain of their sales people who were especially so authorized by respondents, sold or offered to sell such fur products to members of the purchasing public during the course of such bargaining.

The final coded price on said price tags represented the lowest price at which said fur product would generally be sold by respondents to members

of the purchasing public; said final price not being quoted to the prospective purchaser until and after all efforts to effectuate a sale at the higher coded price had been exhausted. The selling prices thus represented in code were not understandable as a price marked on said price tags to a substantial portion of the purchasing public, but could easily be understood by respondents and such of their sales people as were informed of the coding system used. [5]

The use of the aforesaid fictitious prices and misrepresentations as to value on price tags, coupled with oral representations of respondents and their sales people and with the use of advertising containing misrepresentations as set forth in Paragraphs Five and Seventeen through Twenty hereof and incorporated herein by reference, were intended to and did aid, promote and assist, directly or indirectly, in the sale or offering for sale of such fur products.

Paragraph Nine: Certain of said fur products were misbranded in violation of Section 4 (1) of the Fur Products Labeling Act, in that the name or names of the animal or animals producing the fur contained in such fur products were falsely and deceptively identified as "mink" on the reverse side of the label attached thereto, which labels, on the obverse side thereof, bore the proper identification of such fur product.

Paragraph Ten: Certain of said fur products were misbranded in that they did not have affixed



thereto labels showing the information required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Paragraph Eleven: Certain of said fur products were misbranded in that respondents, on labels attached thereto, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Paragraph Twelve: Certain of said fur products were misbranded in violation of the Fur Products Labeling Act in that they were not labeled in accordance with the rules and regulations promulgated thereunder in the following respects:

a. Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the said rules and regulations;

b. Required information was not completely set forth on one side of the labels, as required by Rule 29 (a) of the aforesaid rules and regulations;

c. Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid rules and regulations; [6]

d. Required information was set forth in improper sequence on labels, in violation of Rule 30 of the aforesaid rules and regulations.

Paragraph Thirteen: Certain of said fur products were falsely and deceptively invoiced, in that

they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the rules and regulations promulgated thereunder.

Paragraph Fourteen: Certain of said fur products were falsely and deceptively invoiced in that respondents, on invoices furnished to purchasers of said fur products, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 5 (b) (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

Paragraph Fifteen: Certain of said fur products were falsely and deceptively invoiced, in violation of the Fur Products Labeling Act, in that they were not invoiced in accordance with the rules and regulations promulgated thereunder in the following respects:

a. Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid rules and regulations;

b. Respondents failed to set forth an item number or mark assigned to fur products in violation of Rule 40 (a) of the aforesaid rules and regulations.

Paragraph Sixteen: The aforesaid acts and practices of respondents, as set forth or incorporated by reference in Paragraphs Three through Fifteen hereof, were in violation of the Fur Products Label-

ing Act and of the rules and regulations promulgated thereunder and constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

Paragraph Seventeen: In the course and conduct of their business, respondents caused the dissemination of certain advertisements relating to their aforesaid fur products. Among said advertisements were those published in various newspapers containing certain statements and representations, and those acts, practices, statements and representations referred to in Paragraphs Four through Eight hereof and incorporated herein by reference. Among and including said advertisements, but not limited thereto, were the following: [7]

In the "Los Angeles Examiner," issue of September 20, 1953, the following advertisement of respondents appeared:

"After Thirty-eight Years — Los Angeles' Largest Exclusive Furrier—Pelta Furs Quits. Going Out of Business Sale! . . . Entire Stock Must Go. . . . Slashed Prices. . . ."

In the "Los Angeles Examiner" issue of October 11, 1953:

"Pelta Furs . . . Quits! \$250,000.00 Inventory Sacrificed. Entire Fur Stock Must Go: At a Fraction of Original Prices! Savings Are Tremendous. . . ."

In the "Los Angeles Examiner" issue of November 22, 1953, substantially the same language appeared



as quoted immediately above, with the added statement:

“All Advance 1954 Holiday Gift Furs Now at Cost and Below Cost. . . .”

In the “Los Angeles Examiner” issue of January 17, 1954:

“Out They Go—for Whatever We Can Get! Final Days of Pelta Furs Going Out of Business Sale. A Group to Be Liquidated at Cost or Below Cost. . . . Notice — Arrangements Have Been Made to Adequately Take Care of Complete Guarantee and Promised Free Fur Service. . . .”

| “(Fur Items) | Were   | Now   |
|--------------|--------|-------|
| ”            | \$ 595 | \$166 |
| ”            | 675    | 188   |
| ”            | 750    | 244   |
| ”            | 795    | 299   |
| ”            | 1095   | 333   |
| ”            | 1175   | 398   |
| ”            | 1250   | 444”  |

\* \* \*

In the “Los Angeles Times” issue of September 26, 1954:

“Manufacturers’ Financial Sacrifice!

“Many at Cost! Many Below Cost!

“Many Regardless of Cost! . . .”

In the “Los Angeles Times” issue of October 17, 1954:

“Discount Sale! Tremendous Inventory of Selected Furs. Priced Regardless of [8] Cost! . . .”

| “(Fur Items) | Value Up to | Now   |
|--------------|-------------|-------|
| ”            | .....\$ 250 | \$ 88 |
| ”            | ..... 350   | 128   |
| ”            | ..... 450   | 188   |
| ”            | ..... 595   | 288   |
| ”            | ..... 750   | 388   |
| ”            | ..... 975   | 488   |
| ”            | ..... 3500  | 1488” |

\* \* \*

Paragraph Eighteen: By means of the statements contained in the advertisements set forth or incorporated by reference in Paragraph Seventeen hereof, and others of the same import and meaning not specifically set forth herein, respondents represented that the firm of Pelta Furs, and the owners thereof, respondents herein, were going out of the fur business; were discontinuing operations, and disposing of or liquidating their entire stock of fur products at “distress” prices, and that members of the public could purchase such products at, or for less than, the amount respondents had paid for them. In truth and in fact, Pelta Furs and its owners, respondents herein, did not go and are not now out of the fur business; did not discontinue operations and did not dispose of or liquidate their entire stock at “distress” prices or otherwise. The aforesaid representations as to reduced prices and as to savings to be effectuated thereby, and their



acts, practices, statements and representations, as set forth in Paragraphs Four through Eight hereof and incorporated herein by reference, were false, misleading and deceptive.

Paragraph Nineteen: In the course and conduct of their business, respondents further disseminated advertisements relating to their fur products. Among said advertisements, but not limited thereto, and including those acts, practices, statements and representations referred to in Paragraphs Four through Eight hereof and incorporated herein by reference, was that contained in the "Los Angeles Times" issue of May 24, 1953, which contained, among others, the following statement:

"Now! Pelta Furs Consolidates With Famous Wholesale Mink Manufacturer. More Space Needed! Complete Stock of \$250,000.00 Exquisite Styles Now on Sale at One-Half Price. Present Unchanged Price Tags Now on Garments. You May Deduct 1/2. . . ." [9]

Paragraph Twenty: By means of the statements referred to or incorporated by reference in Paragraph Nineteen hereof, and others of the same import and meaning not specifically set forth herein, respondents represented directly or by implication that the prices marked on their price tags were the usual prices charged by respondents for such products in the recent regular course of their business. In truth and in fact, said price tags contained fictitious prices; as referred to and described in Paragraphs Seven and Eight hereof and incor-

porated herein by reference and the aforesaid advertised reductions in price, such as of one-half off, and the acts, practices, statements and representations referred to in Paragraphs Seven and Eight hereof which have been incorporated herein as aforesaid, were not based upon reductions of such amounts from the usual prices charged by respondents for such products in the recent regular course of their business, and were false, misleading and deceptive.

Paragraph Twenty-one: Respondents, in the course of their business, have been, and are now engaged in commerce, as "commerce" is defined in the Federal Trade Commission Act, and are in substantial competition in commerce with other firms, corporations, co-partnerships and individuals also engaged in the sale of fur products to members of the purchasing public.

Paragraph Twenty-two: The use by the respondents of the aforesaid false and misleading statements and representations as alleged or incorporated by reference in Paragraphs Seventeen through Twenty-one hereof has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that said statements and representations were and are in fact true and into the purchase of substantial quantities of respondents' fur products by reason of such erroneous and mistaken belief.

As a result thereof substantial trade in commerce

has been unfairly diverted to respondents from their competitors and substantial injury has been and is being done to competition in commerce.

Paragraph Twenty-three: The aforesaid acts and practices of respondents, as alleged or incorporated by reference in Paragraphs Seventeen through Twenty-two hereof, are all to the prejudice and injury of the public and of respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

Wherefore, the Premises Considered, the Federal Trade Commission on this 25th day of February, A.D. 1955, issues its complaint against said [10] respondents.

#### Notice

Notice is hereby given you, Jacques De Gorter and Suze C. De Gorter, as individuals and as co-partners trading as Pelta Furs, respondents herein, that the 9th day of May, A.D. 1955, at 10 o'clock is hereby fixed as the time and Los Angeles, California, as the place when and where a hearing will be had before J. Earl Cox, a hearing examiner of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under said Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in this complaint.

You are notified that the opportunity is afforded



you to file with the Commission an answer to this complaint on or before the twentieth (20th) day after service of it upon you. Such answer shall contain a concise statement of the facts which constitute the ground for defense and shall specifically admit or deny each of the facts alleged in the complaint unless you are without knowledge, in which case you shall so state. Failure to file an answer to or plead specifically to any allegation of the complaint shall constitute an admission of such allegation.

If respondents desire to waive hearing on the allegations of fact set forth in the complaint and not to contest the facts, the answer may consist of a statement that respondents admit all the material allegations of fact charged in the complaint to be true. Such answer will constitute a waiver of any hearing as to the facts alleged in the complaint and findings as to the facts and conclusions based upon such answer shall be made and order entered disposing of the matter without any intervening procedure. The respondents may, however, reserve in such answer the right to submit proposed findings and conclusions of fact or of law under Rule XXI, and the right to appeal under Rule XXIII.

Failure to file answer within the time above provided and failure to appear at the time and place fixed for hearing shall be deemed to authorize the Commission and Hearing Examiner J. Earl Cox, without further notice, to find the facts to be as alleged herein and to issue the following order in this proceeding: [11]

It Is Ordered that respondents Jacques De Gorter and Suze C. De Gorter, individually and as co-partners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

2. Failing to affix labels to fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur product contains or is composed of used fur when such is a fact;

c. That the fur product contains or is composed

of bleached, dyed, or artificially colored fur when such is a fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

e. The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce; [12]

f. The name of the country of origin of any imported furs used in the fur product.

3. Setting forth, on labels attached to fur products, the name or names of any animal or animals other than the name or names provided for in Paragraph A (2) (a) above.

4. Setting forth on labels attached to fur products:

a. Non-required information mingled with required information;

b. Required information in handwriting;

c. Required information in a sequence different from that required by Rule 30 (a) of the rules and regulations.

5. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.



B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur product contains or is composed of used fur when such is a fact;

c. That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;

e. The name and address of the person issuing such invoices; [13]

f. The name of the country of origin of any imported furs contained in the fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B (1) (a) above, or setting forth thereon any form of misrepresentation or deception, directly or by implication, with respect to such fur products.

3. Setting forth required information in abbreviated form.

4. Failing to show the item number or mark of

fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, representation, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

a. The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

c. The name of the country of origin of imported furs contained in fur products.

2. Represents directly or by implication:

a. That the regular or usual price of any fur product is any amount which is in excess of the price at which the respondents have usually and customarily sold such products in the recent regular course of their business; [14]

b. That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess



of the difference between said price and the current price at which comparable products are sold;

c. That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;

d. That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means.

e. That any of such products are:

1. From the stock of a business in a state of liquidation, contrary to fact;

2. From the stock of a business recently consolidated with another, contrary to fact.

3. Makes pricing claims or representations of the type referred to in Paragraph C (2) (a), (b), and (c) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

It Is Further Ordered that respondents Jacques De Gorter and Suze C. De Gorter, individually and as co-partners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offer-

ing for sale, sale, and distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further [15] cease and desist from making, directly or by implication, any of the representations prohibited by Paragraph C (2) of this order.

The inclusion of such order to cease and desist in this complaint will be without effect in the event you show cause, on or before the 9th day of May, A.D. 1955, why such order should not issue.

In Witness Whereof, the Federal Trade Commission has caused this, its complaint, to be signed by its Secretary, and its official seal to be hereto affixed, at Washington, D. C., this 25th day of February, 1955.

By the Commission.

/s/ ROBERT M. PARRISH,  
Secretary. [16]

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United States of America,  
Before Federal Trade Commission

[Title of Cause.]

### ANSWER

Come now the respondents, Jacques De Gorter and Suze C. De Gorter, and answer the complaint of the United States of America before the Federal Trade Commission, as follows:

## I.

Answering paragraph One, respondents deny that they are trading as Pelta Furs, and in that regard allege that ever since January, 1954, respondent, Jacques De Gorter has been trading as Pelta Furs at 437 West Seventh Street, Los Angeles, California.

## II.

Answering paragraph Two deny that respondents do now cause, or have for several years last past caused fur products, when sold, to be transported from their place of business in the State of California, to purchasers thereof located in various other places than in the State of California. Respondents deny that they maintain now, and deny that at all times mentioned in the complaint they have maintained, a course of trade in said fur products in commerce, among and between the various states of the United States.

Further answering said paragraph, respondent Jacques De Gorter alleges that all sales of fur products referred to in the complaint have been sold by him to purchasers located in the County of Los Angeles, State of California, but that on infrequent occasions, at the request of the purchaser and as a courtesy to the purchaser, the fur product so sold has been wrapped and deposited by his employees in the mails, or with a common carrier, to be transported to an address outside of the State of California. [18]



## III.

Answering paragraph Three respondents deny that they have introduced, or sold, or advertised, or offered for sale, or distributed fur products in commerce and deny that they have sold, or advertised, or offered for sale, or distributed, or transported fur products which have been made in whole or in part of fur, which had been shipped and received in commerce, as defined in the Fur Products Labeling Act.

Further answering said paragraph, respondents deny that if those fur products sold by them were introduced in commerce, as defined in said Act, that said fur products were misbranded, or falsely advertised, or falsely invoiced in violation of said Act or the rules or regulations promulgated thereunder.

## IV.

Answering paragraph Four deny that any fur products caused to be disseminated, which may have been disseminated or caused to be disseminated in commerce, as commerce is defined in said Act, were falsely or deceptively advertised, in accordance with the provisions of Section 5 (a) of said Act and of the rules and regulations promulgated thereunder.

## V.

Answering paragraph Five deny that the advertisements which appeared in various issues of the Los Angeles Examiner, Los Angeles Times and Los Angeles Herald and Express were violative of Sec-

tion 5 (a) of said Act or the rules and regulations promulgated thereunder.

Further answering said paragraph deny that the so-called regular or usual prices referred to in subdivision (a) were in fact fictitious prices as the word "fictitious" is used in said Act, and particularly in Rule 44 (a) thereof.

Further answering said paragraph deny that comparative prices and other statements referred to in subdivision (b) of said paragraph were not based on current market values as said "current market values" is used in Rule 44 (b) and (c) of said rules and regulations.

Further answering said paragraph deny that the respondents misrepresented the grade, or quality, or value of certain of said fur products by the use of illustrations depicting higher priced or more valuable products than those available for sale at the advertised [19] selling price as alleged in subdivision (c) of said paragraph, and in that regard alleges that any illustrations of furs or fur products appearing in those advertisements were not illustrations of any particular furs or fur products, but were merely illustrative of a type of wearing apparel distinguished from cloth, wool, or other materials of which wearing apparel is made.

Further answering said paragraph deny that respondents misrepresented fur products as being from the stock of a business in a state of liquidation, and respondents allege that any such representations were in fact true.

Further answering said paragraph deny that they

failed to maintain full and adequate records disclosing the facts upon which such claims or representations, referred to in said paragraph, or in paragraphs Seven and Eight of the complaint which by incorporation are included in said paragraph, were made.

## VI.

Answering paragraph Six deny that any of the advertisements of fur products sold by respondents were disseminated in commerce; and further answering said paragraph deny that certain of said fur products advertised by respondents failed to set forth the information required by Section 5 (a) of said Act either in the manner or in the form prescribed by the rules and regulations promulgated thereunder.

Further answering said paragraph deny that respondents failed to disclose the name or names of the animal or animals producing the fur or furs contained in the fur products advertised by respondents, or that said fur products contained or were composed of bleached or dyed or otherwise artificially colored fur, when such was the fact, or the name or country of origin of imported furs containing such fur products, where such fur products were imported from other countries.

## VII.

Answering paragraph Seven deny that certain of said fur products were falsely or deceptively advertised by means of representations or price tags affixed to such fur products; or by oral represen-



tations made by respondents or their sales force or by other means in violation of Section 5 (a) of said Act and the rules and regulations promulgated thereunder. [20]

### VIII.

Answering paragraph Eight deny that the price tags referred to in Paragraph Seven of the complaint, contained fictitious prices or misrepresented the value of such products.

Further answering said paragraph, respondents allege that the price tags exhibited thereon the selling price of the fur or fur product to which said price tag was attached, which selling price was arrived at by respondents in accordance with respondents' mark-up policy, which mark-up policy was based upon the quality of the fur or fur product, the extent of the demand therefor by the buying public, respondents' overhead and other such factors normally taken into consideration in establishing a selling price of any retail commodity.

Further answering said paragraph respondents allege that the definition of the word "fictitious" as contained in said paragraph, is not the generally accepted definition of the word "fictitious" either under general usage or as used by the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

### IX.

Answering paragraph Nine deny that any of said fur products were misbranded in violation of Sec-

tion 4 (1) of said Act in that the label attached to said fur products identified said products as being the name of or produced by any animal other than the proper animal for the identification of said fur or fur product as provided by said Act and the rules and regulations promulgated thereunder.

### X.

Answering paragraph Ten deny that certain of said fur products were misbranded in that they did not have affixed thereto labels showing information required under the provisions of Section 4 (2) of said Act.

Further answering said paragraph respondents allege that respondents have had as many as five hundred furs or fur products in their place of business at one time, all of which were labelled when placed in stock by respondents; that in a few isolated instances labels became detached from the fur products to which they had been affixed and may have been so detached for a short period of time until it was discovered by respondents or their employees that said fur or fur products were not [21] properly labelled and that proper labels were thereafter affixed to said fur or fur products.

### XI.

Answering paragraph Eleven deny that certain of said fur products were misbranded, and in that regard respondents allege that the labels attached the animal that produced the fur, as provided in to each fur product correctly set forth the name of



the Fur Products Name Guide contained in the appendix to the rules and regulations of the Fur Products Labeling Act.

## XII.

Answering paragraph Twelve deny that certain of said fur products were misbranded in violation of said Act in accordance with the rules and regulations promulgated thereunder, and respondents deny more particularly that required information was mingled with non-required information on labels; that required information was not completely set forth on one side of the labels; that required information was set forth in handwriting on labels, and that required information was not set forth in proper sequence on labels.

## XIII.

Answering paragraph Thirteen deny that certain fur products were falsely or deceptively invoiced and in that regard allege that all of said fur products were invoiced as required under the provisions of Section 5 (b) (1) of said Act and of the rules and regulations promulgated thereunder.

## XIV.

Answering paragraph Fourteen deny that respondents furnished to purchasers of fur products invoices on which was set forth the name of an animal other than the name of the animal that produced the fur which was sold to said purchaser.

## XV.

Answering paragraph Fifteen deny that certain of said fur products were invoiced in abbreviated form or without any item number or mark assigned thereto as required by said Act and the rules and regulations promulgated thereunder.

## XVI.

Answering paragraph Sixteen deny that any of the acts [22] or practices of respondents as set forth or incorporated by reference in paragraphs Three through Fifteen of the complaint constitute unfair or deceptive acts or practices in commerce under the Federal Trade Commission Act.

Further answering said paragraph, respondents allege that any acts or omissions to act committed by respondents or their employees as charged in said paragraphs Three through Fifteen, were so few in number as to be inconsequential in the operation of respondents' business, so as not to constitute either unfair or deceptive practices in commerce under the Federal Trade Commission Act as is sought to be prohibited in said Act and in the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

## XVII.

Answering paragraphs Seventeen and Eighteen deny that the advertisement respondents were going out of business was untrue, and in that regard allege that Pelta Furs, a co-partnership composed of Jacques De Gorter and Suze C. De Gorter did, in

fact, go out of business as such partnership on or about January 1, 1954.

Further answering said paragraph deny that the advertisements referred to in said paragraphs, wherein said advertisements indicate sales of furs or fur products at cost or below cost, of at tremendous savings, were false or deceptive, and that respondents did at or about said time sell furs or fur products at or below cost to respondents.

Further answering said paragraphs respondents allege that wherein said advertisements advertised certain fur products or furs as being sold at a price less than the previous price or value, they were in fact true in that said fur products or furs were priced by respondents at the price indicated pursuant to respondents' policy of mark-up and pricing at the time said fur and fur products were placed in stock by respondents.

Further answering said paragraphs, allege that Pelta Furs has, since January, 1954, been operated by respondent Jacques De Gorter as a sole proprietorship and that upon the dissolution of the then existing partnership, as in this answer referred to, respondent Jacques De Gorter purchased the remaining stock of the partnership; that it was not the intention of respondent, Jacques De Gorter, to continue to operate Pelta Furs either as a partnership [23] or as an individually owned business, except for the fact that said respondent had personally guaranteed payment of the rent on a long term lease of the premises occupied by Pelta Furs, and that the lessors of said premises refused to cancel



said lease although prior to said closing out sale by the partnership, said lessors had indicated a contrary intention.

Further answering said paragraphs admit that said partnership had not, at the termination of its closeout sale, disposed of its entire stock for the reason that the buying public did not during that period of the closeout sale, purchase all of the stock offered at distress prices.

### XVIII.

Answering paragraphs Nineteen and Twenty, deny that the advertising referred to therein was false or deceptive under the Fur Products Labeling Act or the rules and regulations promulgated thereunder.

Further answering said paragraphs, specifically deny that said price tags contained "fictitious" prices under the commonly accepted definition of said word, or as used in the Fur Products Labeling Act, and allege that the prices on the price tags referred to in said advertisements were prices arrived at by respondents in accordance with their policy in setting a price upon any fur or fur product offered by them for sale based upon cost, quality, public demand for the particular product, overhead, and all of the other considerations which determine the selling price of any commodity at retail.

Further answering said paragraphs allege that the definition of the word "fictitious" and the construction placed thereon in this complaint, is not a

proper definition or construction of said word either as defined in ordinary usage or as established by the Fur Products Labeling Act and the rules and regulations promulgated thereunder.

### XIX.

Answering paragraph Twenty-One, respondent Jacques De Gorter, denies that in the course of his business he is in substantial competition in commerce with other firms, corporations, co-partnerships or individuals, as contemplated by the Federal Trade Commission Act and the rules and regulations promulgated by it under the Fur Products Labeling Act. [24]

### XX.

Answering paragraph Twenty-Two denies that the statements and representations alleged in paragraphs Seventeen through Twenty-One of this complaint, are false or misleading.

Further answering said paragraph denies that the purchasing public has been either misled or deceived with respect to furs or fur products purchased by said public from respondent by reason of any statements or representations as alleged or incorporated in said paragraphs Seventeen through Twenty-One.

Further answering said paragraph respondent denies that a substantial trade in commerce, as said term "commerce" is used in the Federal Trade Commission Act, or that any trade has been unfairly diverted to respondents from respondents' competitors, and further denies that substantial in-

jury has been done or is being done to competitors in commerce by reason of any acts of omission or commission committed by respondents in the operation of Pelta Furs.

### XXI.

Answering paragraph Twenty-Three, deny that any of the acts or practices of respondents have constituted or do constitute unfair or deceptive acts or practices or unfair methods of competition in commerce within the intent or meaning of the Federal Trade Commission Act and respondent further denies that the acts or practices of respondent referred to in said paragraph were false or misleading or otherwise untrue.

### XXII.

And for a further defense to the complaint, respondents allege that in the operation of Pelta Furs, either as a co-partnership or as an individually owned business, by respondent on and after January, 1954, respondents had not and are not now operating said business "in commerce" within the intent and meaning of the Federal Trade Commission Act, the Fur Products Labeling Act, or any of the rules and regulations promulgated thereunder and that the Federal Trade Commission has no jurisdiction over the conduct and operation of said business as heretofore or now operated.

As a further answer to said complaint, respondents allege that any acts or omissions to act committed by respondents or their employees, alleged in this complaint [25] to have been committed by



respondents were so few in number and of such small consequence as not to have resulted in substantial trade having been unfairly diverted, to respondents from their competitors, or to have resulted in substantial injury having been done to competition in commerce as to lead the Commission to believe that a proceeding by it in respect thereof would be to the interest of the public as provided in Section 5 (b) of the Federal Trade Commission Act.

Wherefore, respondents pray that this complaint be dismissed.

/s/ JACQUES DE GORTER,

/s/ SUZE C. DE GORTER.

Received March 28, 1955. [26]

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United States of America,  
Before Federal Trade Commission

[Title of Cause.]

NOTICE OF INTENTION TO APPEAL

To the Federal Trade Commission:

You Will Please Take Notice that the Respondents in the above-entitled matter, Jacques De Gorter and Suze C. De Gorter, intend to appeal from the Initial Decision made by the Honorable Abner E. Lipscomb, Hearing Officer, in the above-entitled matter on November 18, 1955.

The appeal will be taken upon all available grounds which will be set forth in the brief on appeal.

Dated: December 9, 1955.

WALLEY & DAVIS,

By /s/ J. J. WALLEY,

Attorneys for Respondents.

Received December 12, 1955. [82]

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United States of America,  
Before Federal Trade Commission

Commissioners:

John W. Gwynne,

Chairman,

Lowell B. Mason,

Robert T. Secrest

Sigurd Anderson,

William C. Kern.

Docket No. 6297

In the Matter of:

JACQUES DE GORTER and SUZE C. DE  
GORTER, as Individuals and as Co-Partners  
Trading as PELTA FURS

FINDINGS AS TO THE FACTS,  
CONCLUSIONS AND ORDER

The Commission, having fully considered the entire record herein, including the initial decision

of the hearing examiner and the cross-appeals therefrom, and having rendered its decision granting the appeal of counsel in support of the complaint and denying the appeal of respondents, and having vacated and set aside the initial decision, finds that this proceeding is in the interest of the public and makes this, its findings as to the facts, conclusions drawn therefrom, and order, the same to be in lieu of said initial decision.

### Findings as to the Facts

1. Respondents, Jacques De Gorter and Suze C. De Gorter, are individuals trading as Pelta Furs, with their office and principal place of business located at 437 West Seventh Street, Los Angeles, California.

2. Respondents, Jacques De Gorter and Suze C. De Gorter, individually and trading as Pelta Furs, for several years last past have been engaged in [140] the purchase and distribution of fur products, including fur coats, jackets, stoles and related fur garments.

3. Respondents stipulated that in the course of their business, they are in substantial competition in commerce with other firms, corporations, co-partnerships and individuals also engaged in the sale of fur products to members of the purchasing public, and it is established by uncontroverted evidence that respondents obtained approximately 25% of their fur products by means of purchases made outside the State of California, and that such fur prod-



ucts were shipped to them at their place of business in California. The evidence also shows that these fur products were thereafter advertised in newspapers having an interstate circulation. The evidence further shows that in the months of September, October and November, 1953, respondents sold and shipped one fur product each month to purchasers outside the State of California, and that in the month of December of the same year, respondents so sold and shipped four fur products. Although these seven sales in commerce represent only a small proportion of all respondents' sales during that period of time, they are not mere isolated instances, but constitute a course of trade in commerce among and between the various states of the United States, as "commerce" is defined in the Federal Trade Commission Act. It is further found that the activities of the respondents in procuring fur products from sources outside the State of California, and thereafter advertising and offering for sale in newspapers of interstate circulation, and then selling and shipping and delivering such fur products in commerce clearly bring their business activities within the concept of "commerce" under the Fur Products Labeling Act.

4. As established by stipulation, and by other record evidence, respondents, in the course and conduct of their business, caused to be disseminated, in various newspapers having interstate circulation, advertisements containing certain statements and representations, among and including but not limited to the following: [141]

In the "Los Angeles Examiner," issue of September 20, 1953:

"After Thirty-Eight Years—Los Angeles' Largest Exclusive Furrier—Pelta Furs Quits. Going Out of Business Sale! . . . Entire Stock Must Go . . . Slashed Prices . . ."

In the "Los Angeles Examiner," issue of October 11, 1953.

"Pelta Furs . . . Quits! \$250,000.00 Inventory Sacrificed, Entire Fur Stock Must Go: At a Fraction of Original Prices! Savings are Tremendous . . ."

In the "Los Angeles Examiner," issue of November 22, 1953, substantially the same language appeared as quoted immediately above, with the added statement:

"All Advance 1954 Holiday Gift Furs Now At Cost and Below Cost . . ."

In the "Los Angeles Examiner," issue of January 17, 1954:

"Out They Go—For Whatever We Can Get! Final Days of Pelta Furs Going Out of Business Sale. A Group to be Liquidated at Cost or Below Cost . . . Notice—Arrangements Have Been Made to Adequately Take Care of Complete Guarantee and Promised Free Fur Service . . ."

| “(Fur Items) | Were        | Now   |
|--------------|-------------|-------|
| ”            | .....\$ 595 | \$166 |
| ”            | ..... 675   | 188   |
| ”            | ..... 750   | 244   |
| ”            | ..... 795   | 299   |
| ”            | ..... 1095  | 333   |
| ”            | ..... 1175  | 398   |
| ”            | ..... 1250  | 444”  |
| * * *        | [142]       |       |

In the “Los Angeles Times,” issue of September 26, 1954:

“Manufacturers’ Financial Sacrifice! Many at Cost! Many Below Cost! Many Marked Regardless of Cost! . . . ”

In the “Los Angeles Times,” issue of October 17, 1954:

“Discount Sale! Tremendous Inventory of Selected Furs. Priced Regardless of Cost! . . .

| “(Fur Items) | Value Up To | Now   |
|--------------|-------------|-------|
| ”            | .....\$ 250 | \$ 88 |
| ”            | ..... 350   | 128   |
| ”            | ..... 450   | 188   |
| ”            | ..... 595   | 288   |
| ”            | ..... 750   | 388   |
| ”            | ..... 975   | 488   |
| ”            | ..... 3500  | 1488” |
| * * *        |             |       |

As established by Commission’s Exhibit No. 14, respondents, on May 17, 1953, published in the Los Angeles Examiner an advertisement, as follows:



“Pelta Furs consolidates with famous wholesale mink manufacturer. More Room Required! Complete Stock \$250,000.00 Exquisite Styles Now on Sale 1/2 price. Present unchanged price tags remain on garment. You May Deduct One-Half!!!”

5. Advertisements disseminated in commerce, by respondents, typical examples of which are quoted above and which advertisements were intended to and did aid, promote and assist, directly and indirectly, in the sale and offering for sale by respondents of fur products, are shown by stipulation or otherwise to have been false and deceptive through failure to set forth information required by Section 5 (a) of the Fur Products Labeling Act, by omitting to state:

a. The name or names of the animal or animals producing the fur or furs contained in the fur products, as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations; [143]

b. That fur products contained or were composed of bleached, dyed or otherwise artificially colored fur, when such was the fact;

c. The name of the country of origin of imported fur contained in such fur products.

6. Besides it having been so stipulated by respondents, the record shows and it is found that certain of respondents' fur products were misbranded as follows:

a. The name or names of the animals producing

the fur contained in such fur products were in violation of Section 4 (1) of the Fur Products Labeling Act, falsely and deceptively identified as "mink" on the reverse side of the label attached thereto, on the obverse side of which appeared the proper identification of such fur product;

b. They did not have affixed thereto labels showing the information required under the provisions of Section 4 (2) of the Fur Products Labeling Act and in the manner and form prescribed by the rules and regulations promulgated thereunder;

c. Labels attached to fur products set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 4 (3) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

d. Required information was mingled with non-required information on labels, in violation of Rule 29 (a) of the said rules and regulations;

e. Required information was not completely set forth on one side of the labels, as required by Rule 29 (a) of the aforesaid rules and regulations. [144]

f. Required information was set forth in handwriting on labels, in violation of Rule 29 (b) of the aforesaid rules and regulations;

g. Required information was set forth in improper sequence on labels, in violation of Rule 30 of the aforesaid rules and regulations.

7. As established by stipulation and other evidence of record, certain of respondents' products were falsely and deceptively invoiced, as follows:

a. Certain of respondents' fur products were falsely and deceptively invoiced, in that they were not invoiced as required under the provisions of Section 5 (b) (1) of the Fur Products Labeling Act, and in the manner and form prescribed by the rules and regulations promulgated thereunder;

b. Certain of respondents' fur products were falsely and deceptively invoiced in that respondents, on invoices furnished to purchasers of said fur products, set forth the name of an animal other than the name of the animal that produced the fur, in violation of Section 5 (b) (2) of the Fur Products Labeling Act and the rules and regulations promulgated thereunder;

c. In violation of the Fur Products Labeling Act, they were not invoiced in accordance with the rules and regulations promulgated thereunder, in the following respects:

(1) Required information was set forth in abbreviated form in violation of Rule 4 of the aforesaid rules and regulations;

(2) Respondents failed to set forth an item number or mark assigned to fur products in violation of Rule 40 (a) of the aforesaid rules and [145] regulations.

8. Advertisements, typical examples of which are heretofore quoted, which show discount sales and comparative and fictitious prices, must be considered in connection with respondents' method of determining the prices at which their fur products shall be sold, and of setting forth such prices on the price



tags attached to each fur product. The evidence shows that when a shipment of fur products is received by respondents, price tags are prepared bearing three prices, the largest of which is set forth in plain figures and may be read by anyone. The other two prices are written in code, and may only be read by the respondents or members of their sales staff who know the code. The plainly shown maximum price is referred to by the respondents as the "regular price," and represents respondents' maximum asking price. When a sale is advertised, the plainly marked price is shown as the regular price or value of the item featured, and the higher of the two coded prices is shown as the sale price. The lower of the two coded prices represents the price below which respondents cannot sell the product and still make a profit. These price tags are not altered or removed from the garments when they are placed on sale, and the only price that can be read by the customers is the first or maximum price. These maximum prices are realized by respondents during the off-season in only 10% of their sales, and in the fur-selling season in less than 50% of their sales.

Respondent Jacques De Gorter testified that he never identified a particular garment in advertisements, and that therefore he sold any of his fur garments at any of the three prices marked on the tag, preferably the maximum if he could get it. He further testified that if a customer offered him one of the coded prices and he concluded that he could not sell the garment at the higher price, then he would sell it for the price offered.

The conclusion is warranted, and it is therefore found that:

a. When respondents advertise a sale and list the plainly ticketed price as the regular price of the item on sale, they are using a fictitious price in the sense that it is not the price at which the garment has been customarily and usually sold by the [146] respondents in the recent course of their business in violation of Rule 44 (a) of the aforesaid rules and regulations.

b. The respondents, by the use of comparative prices as shown in the above-quoted advertisements, misrepresented the savings to be effected by purchasers of respondents' fur products in violation of Rule 44 (b) and (c) of the aforesaid rules and regulations.

It is established by stipulation and other evidence of record that:

a. Respondents have misrepresented the grade, quality or value of certain of their fur products by advertising such fur products by the use of illustrations which showed such fur or fur products to be higher priced products than the ones so advertised in violation of Rule 44 (f) of the aforesaid rules and regulations.

b. Respondents, in violation of Rule 44 (g) of the aforesaid rules and regulations, have misrepresented certain of their fur products as being:

(1) from the stock of a business in the state of liquidation; and

(2) from the stock of a business consolidated with that of a famous mink manufacturer.

c. Respondents, by doing the acts and engaging in the practices above found, have failed to maintain full and adequate records disclosing the facts upon which the claims and representations were based, in violation of Rule 44 (e) of the aforesaid rules and regulations. [147]

### First Conclusion

It is concluded that this proceeding is in the public interest for the protection of consumers and others within the purpose and intent of the Fur Products Labeling Act; that respondents through misbranding, false, misleading and deceptive statements, representations and advertising, and false invoicing of fur products as covered, in Paragraphs 1-8, inclusive, intended to, and did, aid, promote and assist, directly or indirectly in the sale of said fur products; and that the use of the aforesaid practices by respondents has been and is unlawful within the meaning of the Fur Products Labeling Act and of the rules and regulations promulgated thereunder and constitute unfair methods of competition, and unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.

9. By means of the statements contained in advertisements, typical examples of which are set forth above, respondents represented that the firm of Pelta Furs, and the owners thereof, were going out of the fur business; were discontinuing operations, and disposing of or liquidating their entire stock of fur products at "distress" prices, and that members



of the public could purchase such products at, or for less than, the amount respondents had paid for them. The record shows, however, that respondents did not go and are not now out of the fur business; did not discontinue operations and did not dispose of or liquidate their entire stock at "distress" prices or otherwise. Accordingly, the aforesaid representations as to reduced prices and as to savings to be effectuated thereby, and respondents' acts, practices, statements and representations relating thereto, are false, misleading and deceptive.

10. By means of statements contained in advertisements, typical examples of which are set forth above, and by oral representations made by respondents or their sales people, respondents represented directly or by implication that price tags affixed to fur products offered for sale by them were the usual prices charged by respondents for their fur [148] products in the recent regular course of business. The evidence substantiates and it is found that said quoted prices were primarily for bargaining purposes; the actual price at which respondents generally expected to and did sell such fur products during the recent regular course of their business was a lower price, as set forth in a series of coded prices on the price tags. The final coded price represented the lowest price at which the fur product can be sold and still permit respondents to make a profit. The selling prices so represented in code were not understandable as a price marked on said price tags to a substantial portion of the purchasing public,

but could be easily understood by respondents and their sales people.

Respondent Jacques De Gorter testified that he sold fur products, or authorized their sale, at any of the three prices marked on the price tag, preferably the maximum. He further testified that if a customer would not purchase at the higher price but offered a price within the maximum and minimum code prices, then he would on occasion sell, or authorize the sale, at the price offered.

Accordingly, it is found that when respondents advertise a sale and list the plainly ticketed price as one at which a fur product has been customarily and usually sold in the recent course of business they are using fictitious prices. And, by use of the comparative prices as shown in the above-quoted advertisements, respondents have misrepresented the savings to be effected by prospective purchasers of their fur products. In summary, by affixing to fur products price tags showing plainly marked price values containing fictitious prices and by the afore-said advertised reductions in price, such as one-half off and by comparative pricing, coupled with oral representations made by respondents and their sales people, respondents are found to have engaged in false, misleading and deceptive practices.

It is further established by stipulation and other probative evidence that respondents by means of illustrations or depictions of higher priced or more valuable fur products than those actually [149] available for sale at the advertised selling price have

represented that such fur products are of a higher grade, quality, or value than is the fact.

11. The complaint herein alleges and the record shows that the principal acts and practices complained of occurred in 1953, prior to the dissolution of the partnership between the two respondents, which occurred on January 31, 1954. The withdrawal of Suze C. De Gorter from the business of Pelta Furs, after participation in the commission of unlawful acts and practices, does not absolve her from responsibility therefor under the Federal Trade Commission Act and the Fur Products Labeling Act. Furthermore, the record contains no evidence which would give adequate assurance to the Federal Trade Commission that she would not again participate in such acts in the future. Accordingly, respondent Suze C. De Gorter must be held equally responsible with respondent Jacques De Gorter for the acts and practices herein found to be in violation of the Fur Products Labeling Act and the Federal Trade Commission Act. Therefore, the dismissal of the complaint as to her is not warranted.

#### Final Conclusions

It is concluded, as previously indicated, that this proceeding is in the public interest, and that the use by respondents of the false and misleading statements and representations covered in Paragraphs 9 and 10 above has had and now has the tendency and capacity to mislead and deceive a substantial portion of the purchasing public into the erroneous and mistaken belief that such statements and representa-



tions were and are in fact true, and to induce the purchase of substantial quantities of respondents' fur products by reason of such erroneous and mistaken belief. As a result thereof, substantial trade in commerce has been unfairly diverted to respondents from their competitors, and substantial injury has been and is being done to competition in [150] commerce.

It is further concluded that the aforesaid acts and practices of respondents, covered in Paragraphs 9 and 10 above, are all to the prejudice and injury of the public and of the respondents' competitors, and constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act.

### Order

It Is Ordered that respondents, Jacques De Gorter and Suze C. De Gorter, individually and as co-partners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the introduction, or the sale, advertising or offering for sale, or the transportation or distribution of any fur product in commerce, or in connection with the sale, advertising, offering for sale, transportation or distribution of fur products which have been made in whole or in part of fur which had been shipped and received in commerce, as "commerce," "fur," and "fur product" are defined in the Fur Products Labeling Act, do forthwith cease and desist from:

A. Misbranding fur products by:

1. Falsely or deceptively labeling or otherwise identifying any such product as to the name or names of the animal or animals that produced the fur from which such product was manufactured;

2. Failing to affix labels to fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and [151] regulations;

b. That the fur product contains or is composed of used fur when such is a fact;

c. That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies or waste fur when such is a fact;

e. The name, or other identification issued and registered by the Commission, of one or more persons who manufactured such fur product for introduction into commerce, introduced it into commerce, sold it in commerce, advertised or offered it for sale in commerce, or transported or distributed it in commerce;

f. The name of the country of origin of any imported furs used in the fur product.

3. Setting forth, on labels attached to fur prod-

ucts, the name or names of any animal or animals other than the name or names provided for in Paragraph A (2) (a) above.

4. Setting forth on labels attached to fur products:

- a. Non-required information mingled with required information;
- b. Required information in handwriting;
- c. Required information in a sequence different from that required by Rule 30 (a) of the rules and regulations. [152]

5. Failing to show, on labels attached to fur products, all of the required information on one side of such labels.

B. Falsely or deceptively invoicing fur products by:

1. Failing to furnish invoices to purchasers of fur products showing:

a. The name or names of the animal or animals producing the fur or furs contained in the fur product as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur product contains or is composed of used fur when such is a fact;

c. That the fur product contains or is composed of bleached, dyed, or artificially colored fur when such is a fact;

d. That the fur product is composed in whole or in substantial part of paws, tails, bellies, or waste fur when such is a fact;



e. The name and address of the person issuing such invoices;

f. The name of the country of origin of any imported furs contained in the fur product.

2. Using on invoices the name or names of any animal or animals other than the name or names provided for in Paragraph B (1) (a) above, or setting forth thereon any form or misrepresentation or deception, directly or by implication, with respect to such fur products.

3. Setting forth required information in abbreviated form. [153]

4. Failing to show the item number or mark of fur products on the invoices pertaining to such products, as required by Rule 40 of the rules and regulations.

C. Falsely or deceptively advertising fur products, through the use of any advertisement, public announcement, or notice which is intended to aid, promote or assist, directly or indirectly, in the sale or offering for sale of fur products, and which:

1. Fails to disclose:

a. The name or names of the animal or animals producing the fur or furs contained in the fur products as set forth in the Fur Products Name Guide and as prescribed under the rules and regulations;

b. That the fur products contain or are composed of bleached, dyed, or otherwise artificially colored fur when such is a fact;

c. The name of the country of origin of imported furs contained in fur products.

2. Represents directly or by implication:

a. That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

b. That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold; [154]

c. That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;

d. That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means.

e. That any of such products are:

1. from the stock of a business in a state of liquidation, contrary to fact;

2. from the stock of a business recently consolidated with another, contrary to fact.

3. Makes pricing claims or representations of the type referred to in Paragraph C (2) (a), (b), and (c) above, unless there is maintained by respondents full and adequate records disclosing the facts upon which such claims or representations are based.

It Is Further Ordered that respondents, Jacques De Gorter and Suze C. De Gorter, individually and as copartners trading as Pelta Furs or under any other trade name, and respondents' representatives, agents, and employees, directly or through any corporate or other device in connection with the offering for sale, sale, and distribution of fur products in commerce, as "commerce" is defined in the Federal Trade Commission Act, do further cease and desist from making, directly or by implication, any of the representations prohibited by Paragraph C (2) of this order. [155]

It Is Further Ordered that the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

By the Commission. Commissioners Gwynne and Mason dissenting in part.

/s/ ROBERT M. PARRISH,  
Secretary.

Issued: May 11, 1956.

[3 sets of initials.]



Attached is Opinion of the Commission by Commissioner Kern.

Also attached is Opinion of Chairman Gwynne dissenting in part joined in by Commissioner [156] Mason.

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United States of America,  
Before Federal Trade Commission

Docket No. 6297

Commissioners:

John W. Gwynne, Chairman;  
Lowell B. Mason,  
Robert T. Secrest,  
Sigurd Anderson,  
William C. Kern.

In the Matter of:

JACQUES DE GORTER and SUZE C. DE  
GORTER, as Individuals and as Co-Partners  
Trading as PELTA FURS

OPINION ON APPEAL FROM  
INITIAL DECISION

By Kern, Commissioner:

Respondents, retailers of furs, were charged in a complaint, issued February 25, 1955, with false advertising, misbranding and false invoicing of fur products in violation of the Fur Products Labeling Act and rules and regulations promulgated thereunder, and, further, the acts complained of also

were alleged to constitute unfair methods of competition and unfair and deceptive practices under the Federal Trade Commission Act.

In due course, the hearing examiner filed his initial decision in which he found that respondents had engaged in all of the questioned acts and practices. On the basis of these findings he concluded that such acts constituted unfair and deceptive acts and practices and unfair methods of competition in commerce "within the intent and meaning of the Federal Trade Commission Act."

Both sides have appealed from the initial decision. Respondents contend on appeal that the complaint against them should be dismissed. Counsel in support of the complaint appeals from the failure of the hearing examiner to prohibit as violative of the Fur Products Labeling Act, [157] as well as the Federal Trade Commission Act, respondents' use, in their advertising, of fictitious or false comparative price and value representations as to fur products.

The facts in this proceeding are not seriously in dispute. Most of the factual issues have been resolved by stipulations between counsel and the only issues remaining for consideration arise out of disputed interpretations and conclusions to be drawn from facts on the record, stipulated and otherwise.

Respondents' contention that no cease-and-desist order should be entered against them essentially is based upon a two-pronged plea:

(1) That respondents were not, and are not now, engaged in interstate commerce.

(2) That Rule 44 (a) to (g), inclusive, of the rules and regulations promulgated by the Commission under the Fur Products Labeling Act, is not binding upon respondents since it, Rule 44, is beyond the Commission's authority under that Act.

On the question of whether respondents are engaged in commerce, it was stipulated on the record by agreement of counsel, and the hearing examiner found, that respondents are in substantial competition in commerce with other firms, corporations, co-partnerships and individuals also engaged in the sale of fur products to members of the purchasing public. And, the hearing examiner found uncontroverted evidence showing that 25% of the fur products dealt in by respondents consisted of purchases outside of California which are shipped to them at their place of business in that State, and that these products were advertised in newspapers having interstate circulation. The hearing examiner also found that respondents sold and shipped fur products to purchasers outside of California, thus engaging in a course of trade in commerce, as "commerce" is defined in the Federal Trade Commission Act. Since the record clearly discloses that respondents procured fur products outside of California and thereafter advertised them in newspapers with interstate circulation, their business activities clearly come "within the concept of commerce under the Fur Products Labeling Act." We are of the [158] opinion that the hearing examiner's conclusion that respondents' business activi-



ties come within the ambit of both Acts is correct and is substantiated on the record.

Our conclusion that respondents are engaged in interstate commerce, both as defined by the Fur Products Labeling Act and by the Federal Trade Commission Act, as indicated above, and our rulings hereinafter on respondents' second plea on appeal and on the appeal of counsel in support of the complaint render it unnecessary specifically to discuss in this opinion respondents' exceptions on appeal as such.

Respondents' second plea on appeal and the cross-appeal of counsel in support of the complaint raise the remaining issue, which we state as follows:

Is Rule 44 of the Rules and Regulations under the Fur Products Labeling Act, relating to misrepresentation of prices and values with regard to fur products, within the rule making authority conferred upon the Commission by the Act?

Under Section 8 (b) of the Fur Products Labeling Act, the Commission is both empowered and directed to prescribe rules and regulations governing the manner of disclosing information required by the Act and those necessary and proper for purposes of its administration and enforcement. Agency rule-making authority embraces statements of general applicability designed to implement or interpret existing law and policy. Hence, if the acts cataloged as price misrepresentations and the matters which persons are forbidden to "advertise"

under the various paragraphs of Rule 44 are practices forbidden under the Act itself, then the rule must be regarded as a valid exercise of the Commission's authority to promulgate rules.

The validity of the rule's prohibitions against pricing misrepresentations turns primarily on the meaning of the following underscored language in Section 5 (a) (5):

“Sec. 5 (a). For the purposes of this Act, a fur product or fur shall be considered to be falsely or deceptively advertised if any advertisement, representation, public announcement, or notice which is intended to aid, promote, or [159] assist directly or indirectly in the sale or offering for sale of such fur product or fur——

\* \* \*

(5) contains the name or names of any animal or animals other than the name or names specified in Paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur; \* \* \* (Underscoring supplied.)

There can be no doubt but that the underscored language, when literally read, comprehends all forms of misrepresentation or deception in connection with the advertising of furs and fur products. That this phrase constitutes a separate and substantive rule of law rather than a mere amplification of other requirements of the Act also is clear. Attesting to this is the fact that a comparable provision in reference to false invoicing (Section

5 (b) (2)) is likewise prefaced by the disjunctive “or” and in the misbranding section (Section 4 (1)) a similar expression is entirely segregated from the requirements for affirmative disclosure as to the presence of used fur, waste fur, and other matters and is an integral part of one of the various definitive provisions relating to misbranded fur products. Thus, under that subsection, a fur product is misbranded when falsely or deceptively labeled and also when the label contains any form of misrepresentation or deception with respect to it.

Relevant to this aspect and another circumstance indicating that the phrase under consideration was to stand alone is the fact that similar but not identical language appeared in the first two bills considered by the Congress on the subjects of fur labeling, advertising and invoicing. Prior to the statute’s final enactment by the 82nd Congress, legislation had been considered in the 80th and 81st Congresses. The definitions of deceptive advertising and invoicing provided under each of the two original bills introduced in the 80th Congress appeared in one section comprising one paragraph and containing two numbered provisions. Under each bill, one numbered provision forbade use of animal names other than those elsewhere specified in the Act, and the other rendered [160] advertising and invoicing false when “any other form of misrepresentation or deception other than misbranding is practiced directly or by implication in connection with the sale of such article or fur.”

The House committee considered the particular



bill pending before that body and reported out a substitute bill which treated the subjects of false advertising and invoicing separately and imposed certain affirmative disclosure requirements. The revisions necessitated for the disclosure requirements and in another respect for defining false and deceptive advertising comprised four new, separately numbered subsections, and the original two provisions were retained to constitute a fifth subsection, but without numerical differentiation between them as formerly. The language of the committee's substitute in reference to general deception was identical to that of Section 5 (a) (5), as today effective.

We note, too, that Section 5 (a) (5) of the Fur Act is somewhat analogous to Section 15 (a) (2) of the Federal Trade Commission Act. The former is in the disjunctive and consist of a specific provision that is followed by a more general provision. The specific expression condemns the use of any animal names for fur products other than those listed in the Fur Products Name Guide without regard to whether such use would be, or tends to be, deceptive. This resembles the flat prohibition of Section 15 (a) (2) of the Federal Trade Commission Act against the use of dairy terms in oleomargarine advertising suggesting that such margarine is a dairy product and irrespective of whether deception has been engendered. As recently held in *Reddi-Spred Corp. v. Federal Trade Commission*, No. 11673, 3d Cir., Jan. 18, 1956, it is not necessary for the Commission to prove deception in proceedings instituted under the section relating to the

advertising of margarine. It is apparent that the obvious intent and effect of the first provision of Section 5 (a) (5) of the Fur Act was to make unlawful per se the use of animal names not listed in the Fur Guide with the second element of the disjunction then providing that all forms of provable deception should also be unlawful. Reading the statute in this fashion, there is no tenable basis for conclusions that the broad provision is limited by the specific provision that precedes it. [161]

Having concluded that the provision against misrepresentation and deception was not to be a mere adjunct to other language in Section 5 (a) (5) and that it constituted instead a separate and substantive rule of law, we turn to the question of whether Congress may have intended to exclude misrepresentation of prices from its application. While the legislative reports do not specifically or expressly indicate that Congress intended to proscribe pricing misrepresentations, neither do they show that this form of misrepresentation was to be excluded. The report submitted in the House which antedated the brief conference report on the final draft of bill emphasized the requirements for affirmative disclosure set out in Sections 4 and 5. However, the report submitted by the Senate Committee which antedated the conference report referred to Section 4 relating to misbranding and stated that a product would be considered to be misbranded if falsely or deceptively labeled or identified or "if the label contains any form of misrepresentation or deception"; and it added, among other things, that



Section 5, the false advertising section, closely followed the language of Section 4.

Nor does the testimony received during the legislative hearings contain any conclusive indication that instead of a literal interpretation the phrase under consideration should be given some secondary meaning, perhaps, restricting it to advertising misrepresentations solely related to physical or zoological characteristics and attributes of fur articles. On the contrary, there was recognition in certain of the testimony as to enforcement problems then being encountered by the Commission in the administration of its Trade Practice Rules for the Fur Industry, particularly those directed against price misrepresentations. Two of those rules (Rules 25 and 29) had provisions similar to those in Rule 44.

The absence of references in the Act to pricing misrepresentations is nowise controlling. “[I]f Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators.” *Barr v. United States*, 324 U.S. 83, 90 (1945). Furthermore, statutory expressions are to be broadly construed within the limitations of their literal meaning and the ascertainable legislative intent. The [162] plain meaning of the statute will prevail as long as it does not lead to absurd results or clash with policy behind the legislation. *U. S. v. American Trucking Associations, Inc.*, 310 U.S. 534, 543 (1940).



In the circumstances here, moreover, we are convinced that the Congress' goal was a legislative solution of the fur industry's major problems, including that of deceptive pricing representations and that, when enacting this legislation, its intention was to proscribe all deceptive advertising practices in connection with the sale of fur articles.

The respondents' appeal is without merit and denied accordingly. The appeal of counsel supporting the complaint challenges, among other matters, the initial decision's failure to prohibit all of the practices covered therein, including particularly respondents' pricing practices, as violative of the Fur Products Labeling Act and the rules and regulations promulgated thereunder. His appeal is granted. Having determined that the initial decision was deficient in that and related respects, we, in the discharge of the ultimate responsibility for determining the merits of this proceeding and in the interests of conforming its disposition with the views expressed in this opinion, have appended hereto the Commission's findings as to the facts, conclusions and order to cease and desist. These are adopted in lieu of the initial decision of the hearing examiner which is hereby vacated and set aside.

Commissioners Gwynne and Mason dissented in part in the decision herein.

May 11, 1956. [163]

United States of America,  
Before Federal Trade Commission

[Title of Cause.]

OPINION OF CHAIRMAN GWYNNE,  
DISSENTING IN PART

By Gwynne, Chairman:

I dissent from that part of the majority opinion which grants the appeal of counsel supporting the complaint. It is my view that Rule 44 of the Rules and Regulations under the Fur Products Labeling Act is not warranted by anything in that law.

The hearing examiner found that certain practices of respondents violated the Fur Products Labeling Act and issued an order accordingly. He also found that respondents had made certain other representations which were contrary to the Federal Trade Commission Act and issued an order in accordance with such findings.

I agree with his findings and order.

Authority for Rule 44 and for the conclusion of the majority is claimed to be found in the underlined portion of Section 5 (a) (5) of the Fur Products Labeling Act. Section 5 (a) (5) is as follows:

“(5) contains the name or names of any animal or animals other than the name or names specified in paragraph (1) of this subsection, or contains any form of misrepresentation or deception, directly or by implication, with respect to such fur product or fur”; [164]

The majority opinion contains the following:

“There can be no doubt but that the underscored language, when literally read, comprehends all forms of misrepresentation or deception in connection with the advertising of furs and fur products. That this phrase constitutes a separate and substantive rule of law rather than a mere amplification of other requirements of the Act also is clear.”

On the basis of this interpretation, the majority opinion “vacated and set aside” the initial decision and adopted new findings in lieu thereof and issued a new order. Among other things, the order prohibits advertising which represents directly or by implication:

“a. That the regular or usual price of any fur product is any amount which is in excess of the price at which respondents have usually and customarily sold such products in the recent regular course of their business;

“b. That a sale price enables purchasers of fur products to effectuate any savings in excess of the difference between the said price and the price at which comparable products were sold during the time specified or, if no time is specified, in excess of the difference between said price and the current price at which comparable products are sold;

“c. That an amount set forth on price tags, or otherwise relating or referring to fur products, represents the value or the usual price at which said fur products had been customarily sold by respondents in the recent regular course of their business, contrary to fact;



“d. That any such product is of a higher grade, quality, or value than is the fact, by means of illustrations or depictions of higher priced or more valuable products than those actually available for sale at the advertised selling price, or by any other means;

“e. That any of such products are:

“1. from the stock of a business in a state of liquidation, contrary to fact; [165]

“2. from the stock of a business recently consolidated with another, contrary to fact.”

Such an order is justified under the Federal Trade Commission Act but not under the Fur Products Labeling Act.

The interpretation placed by the majority on the Fur Products Labeling Act violates well-established principles of statutory construction and is contrary to the intent of Congress in passing the Act. The clause in question, instead of being a separate and substantive rule of law is limited by the specific provision which precedes it. This is in accordance with the principle of *ejusdem generis*. “*Ejusdem generis* means literally of the same kind or species.” *People v. Machalski*, 115 N.Y.S. 2 (d) 28.

“The principle (*ejusdem generis*) requires that general terms appearing in a statute in connection with precise, specific terms shall be accorded meaning and effect only to the extent that the general terms suggest items or things similar to those designated by the precise or specific terms. In other words, the precise terms modify, influence or restrict the interpretation or application of the gen-

eral terms where both are used in sequence or collocation in legislative enactments.” *State v. Thompson* (Washington, 1951), 232 P. 2 (d) 87.

“The rule is based on the supposition that if the legislature had intended the general words to be considered in an unrestricted sense, it would not have enumerated the particular things.” *Smith v. Higginbothom* (Maryland, 1946), 28 A. 2nd 754.

The law itself and the Congressional history also throw light on the proper interpretation of the section in question. Paragraphs (1), (2), (3) and (4) of Section 5 (a) contain specific provisions prohibiting false advertising relating to the character or quality of the fur itself. Paragraph (5) contains another specific provision, to wit, that the advertisement shall not contain “the name or names of any animal or animals other than the name or names specified in Paragraph (1) of this subsection.” Congress evidently concluded that some amplification of that provision was necessary. For example, deception might be caused as to the character or quality of furs by means other than the use of names; pictures or slogans or other means could be employed which might not come within the strict category of “names.” [166]

Paragraph (6) prohibits an advertisement which “does not show the name of the country of origin of any imported furs or those contained in a fur product.” If the majority view is correct, Paragraph (6) is not necessary and adds nothing to Section 5. In fact, that is true of the other paragraphs in the section.

I fail to see how the use of the disjunctive “or” supports the majority view. The word “or” is common in many statutes where the principle of ejusdem generis was held applicable. Nor can I see any analogy between the section here considered and Section 15 (a) (2) of the Federal Trade Commission Act. There is nothing in the Act or in the legislative history to indicate that Congress intended the Fur Products Labeling Act to cover the types of deceptive advertising heretofore set out.

I would adopt the findings and order of the hearing examiner and deny both appeals.

Commissioner Mason joins in this dissent.

May 11, 1956. [167]

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Before the Federal Trade Commission  
Docket No. 6297

In the Matter of:

JACQUES DE GORTER and SUZE C. DE  
GORTER, as Individuals and as Co-Partners  
Trading as PELTA FURS

Tuesday, July 5, 1955

Met, pursuant to notice, at 10:00 a.m.

Before: Abner E. Lipscomb, Trial Examiner.

Appearances:

EDWARD F. DOWNS,  
Attorney for the Federal Trade  
Commission.



J. J. WALLEY,

Attorney for the Respondents, Jacques De Gorter and Suze C. De Gorter.

### PROCEEDINGS

Hearing Examiner Lipscomb: The hearing will come to order. Let the record show that on June 20th, 1955, counsel for the respondent filed in the Office of the Federal Trade Commission in Washington, D. C., a motion for continuance which was rejected by the Hearing Examiner orally on June 20, 1955. Both respondent and counsel for respondent are present in the hearing room, and the Hearing Examiner wishes to express to them his appreciation for their cooperation, realizing that there has been a considerable hardship placed upon them to meet this engagement.

Before we receive evidence in support of the complaint, I should like to go off the record a few minutes.

(Discussion off the record.)

Hearing Examiner Lipscomb: On the record.

Mr. Walley: The respondent Jacques De Gorter only is willing to stipulate as follows, only to him, that he has committed the acts contained in Paragraph 6 of the complaint and all the subdivisions contained there, A, B and C, but that he does not stipulate to the language contained therein which is a conclusion. The words "falsely and deceptively" he does not stipulate; that his acts were falsely,

shall we say we strike from Paragraph 6 the words "Falsely and deceptively."

All the rest of Paragraph 6 may be deemed to be stipulated to by this respondent. [3\*]

The respondent stipulates that he has committed the acts contained in Paragraph 9 in the complaint and Paragraph 10, and Paragraph 11, and Paragraph 12, and Paragraph 13, and Paragraph 14, and Paragraph 15. Respondent further stipulates that as to Paragraph 21, that the facts therein alleged are true and correct. It is further indicated by the respondent Jacques DeGorter that should the Court find in the final conclusion, of course, that he is engaged in interstate commerce, that it has no objection to a cease and desist order being made, and which appears as the cease and desist order which would be made following the complaint, with respect to Subdivision A, and all of the subdivisions thereunder; Subdivision B, and all the subdivisions thereunder, and all of Subdivision C, C Subdivision 1, Subdivision A, Subdivision B, Subdivision C, except with respect to the language contained in Subdivision C, the words, "falsely or deceptively" should be stricken as being a conclusion which follows from the acts complained thereof in the subparagraphs A, B and C.

I believe that is all of the matter that we will stipulate to as to the respondent Jacques DeGorter.

Hearing Examiner Lipscomb: Off the record.

(Discussion off the record.)

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.

Hearing Examiner Lipscomb: On the record.

Mr. Walley: It will be further stipulated that the respondent Suze DeGorter may be joined to the same stipulation [4] as was entered into between the Government and respondent Jacques DeGorter. It is further stipulated, however, that the respondent, Suze DeGorter, has not committed any of the acts referred to in the stipulation since January 31, 1954, and that she has had no financial interest of any kind in Pelta Furs since January 31, 1945.

Mr. Downs: That is satisfactory.

Hearing Examiner Lipscomb: All parties present approve the stipulation as stated?

Mr. Downs: Yes.

Mr. Walley: Yes.

Hearing Examiner Lipscomb: The stipulation is approved and accepted.

Off the record.

(Discussion off the record.)

Hearing Examiner Lipscomb: On the record.

Mr. Walley: May I point out before Mr. Downs proceeds, that we have not stipulated that the respondent, or either of them, were engaged in interstate commerce, so that the burden of proof as to that fact still rests with the Government.

Mr. Downs: I am aware of that; I know that is one of the primary issues in the case.

Call Mr. DeGorter. [5]



**JACQUES DeGORTER**

was thereupon called as a witness for the Commission and, having been first duly sworn, testified as follows:

**Direct Examination**

By Mr. Downs:

Q. Will you give your full name, please?

A. Jacques DeGorter.

Q. And your address, sir.

A. 1881 North Stanley Avenue.

Q. What is your occupation or business, Mr. DeGorter?      A. I am a furrier.

Q. And what is the name of your company?

A. Pelta Furs.

Q. Is that a proprietorship, partnership, or corporation?      A. Sole ownership.

Q. Are you the sole owner?

A. I am the sole owner.

Q. And where is that located, sir?

A. 437 West Seventh Street.

Q. And how long have you been in the fur business?      A. 39 years.

Q. Not always at that address; were you, sir?

A. No, sir.

Q. Has it always been a proprietorship?

A. No, sir. [6]

Q. Before it was a proprietorship, what type of business was it?      A. It was a partnership.

Q. And who was your partner?

A. Mrs. Suze DeGorter.

Q. And when was that partnership terminated?

(Testimony of Jacques DeGorter.)

A. The last day of January, 1954.

Q. During the time that it was a partnership, under what name did you do business?

A. Pelta Furs.

Q. And at the same location?

A. Same location.

Q. What steps were taken by you, sir, in dissolving the partnership?

A. A petition for dissolution of the partnership was filed within the County Recorder of the County of Los Angeles.

Q. When was that filed?

Mr. Walley: If the Court please, I am going—just a moment—I thought that we had stipulated that that partnership was dissolved. I don't see any need to go into an examination as to those facts in view of the stipulation.

Mr. Downs: There is no question about the partnership being dissolved. These questions are aimed primarily at the allegations in the complaint with regard to the advertisements that he was going out of business, going out of business [7] sale, and I am not trying to question the stipulation as to Mrs. DeGorter's leaving the partnership, but I do believe that this information will be pertinent to that allegation.

Mr. Walley: If that is the purpose, then I have no objection.

Mr. Downs: That is the sole purpose. I am not questioning that Mrs. DeGorter left the partnership at all.

(Testimony of Jacques DeGorter.)

A. On or about the middle of January, 1954.

Q. (By Mr. Downs): That was when your dissolution papers were filed?

A. Pardon me, will you repeat your question again? Your question was, I thought, when did you take steps to file dissolution?

Q. Yes; that's right.

A. It was on or about the middle of January, 1954.

Q. Yes. Now, Mr. DeGorter, you are here as a result of a subpoena, you were also served with a notice to bring with you certain documents; is that correct?      A. Yes, sir.

Q. Do you have those documents with you, sir?

A. Yes, sir.

Q. I would like at this time to call upon you for the documents requested, the shipping orders, Items No. 1 through 15 of the documents that were requested. May I have those, sir?

A. Mr. Anderson took photocopies of these shipping orders. [8] I brought the original sales because when Mr. Anderson brought the shipping orders back. they were not filed back in their original places, and I spent half of my holiday to look for them, but I have the original sales slips and since I thought that you wanted to establish the cities where the shipments were made to and since Mr. Anderson has the photocopies, maybe I can testify from photocopies as correct, and avoid further—

Q. All right, that is satisfactory to me; I just



(Testimony of Jacques DeGorter.)

wanted to avoid the question of the best evidence in trying to use the photostats.

Mr. Downs: If I may again indulge the Court while I remove the photostats from the file, I anticipated using the originals.

Hearing Examiner Lipscomb: Off the record.

(Discussion off the record.)

Hearing Examiner Lipscomb: On the record.

Mr. Downs: Will you mark these for identification as Commission's Exhibits 1, 2, 3, 4, 5, 6, 7 and 8, for identification, please?

(The papers referred to were marked Commission's Exhibits 1 through 8 for identification.)

Q. (By Mr. Downs): Mr. DeGorter, I hand you what has been marked for identification as Commission's Exhibits 1 through 8 for identification, and ask you to look at those and tell me, if you [9] will, what they are, sir?

A. They are sales slips.

Q. Pelta Furs sales slips?                   A. Yes, sir.

Mr. Downs: First I will offer in evidence Commission's Exhibits 1 through 8, being photostatic copies of Pelta Furs sales slips.

Hearing Examiner Lipscomb: The tendered Exhibits 1 through 8 are received in evidence.

Mr. Walley: I have no objection, but would you tell me, Mr. Downs, the corresponding numbers, please, the numbers that you put on there?

(Testimony of Jacques DeGorter.)

Mr. Downs: Yes; 29 is 1, and so forth.

Mr. Walley: I see.

(The documents referred to, heretofore marked for identification Commission's Exhibits 1 through 8, were received in evidence.)

Q. (By Mr. Downs): Mr. DeGorter, these sales slips, Commission's Exhibits 1 through 8, indicate that furs were purchased from Pelta Furs to be shipped to addresses indicated thereon, which were outside of the State of California; is that correct, sir? A. Yes.

Q. Mr. DeGorter, were these furs sold according to these sales slips actually shipped to the addresses noted hereon? [10] A. Yes, sir.

Q. And they were shipped by Pelta Furs; is that correct? A. Yes, sir.

Q. May I ask you, sir, if in the State of California, you have an obligation in the conduct of your business to collect a sales tax on furs that you sell? A. Yes, sir.

Q. And you do not collect that tax, is that correct, on furs that are shipped outside of the State; is that correct? A. Yes, sir.

Q. And on these purchases on Commission's Exhibits 1 through 8, you did not collect the sales tax?

A. Yes.

Q. Now, in shipping these garments, did you insure them?

A. No, sir; we did not take any special precau-

(Testimony of Jacques DeGorter.)

tions for that because all our shipments are automatically insured in and out of the State.

Q. What do you mean, "automatically insured"?

A. We have a binder with the insurance company that everything we ship with common carrier in the United States is insured for the cost of the merchandise.

Q. You are insured for the cost of the merchandise; is that for your cost?

A. For our cost.

Q. Or the sales price? [11]

A. No; our cost; replacement value.

Q. And that applied to these purchases indicated by Commission's Exhibits 1 through 8?

A. Yes, sir.

Q. And that insurance, if these became lost, would be payable to Pelta Furs; is that correct?

A. Yes, sir.

Q. It is noted that on Commission's Exhibit No. 8 that there was a 60-day charge sale; is that correct?      A. That is correct, sir.

Q. It is also noted that the sale on Commission's Exhibit No. 5 was on a 60-day account; is that correct?      A. On the balance.

Q. Yes; on the balance. And will you explain the sale on Commission's Exhibit No. 3; what the terms of that was?

A. That was to be paid before shipment.

Q. And explain the terms of the sale on Commission's Exhibit No. 2?



(Testimony of Jacques DeGorter.)

A. To be paid before shipment.

Q. And also on Commission's Exhibit No. 1?

A. The same thing; the same party.

Q. Those were to be paid for before shipment, on one and two; is that correct?

A. As far as I can recall; yes.

Q. None of these were C.O.D. sales; is that correct? [12]

A. Pardon me. None of the ones showed me. This one I couldn't say for sure, because this might have been C.O.D.

Q. Have you on occasions, Mr. DeGorter, shipped any furs that you have sold outside of the State of California on a C.O.D. shipment?

A. Yes, sir.

Q. Can you give me an approximation of how many such C.O.D. shipments you have made?

A. That is hard to tell; very few.

Q. But you have made them?

A. A few; yes, sir

Q. Have you made other shipments out of the State of California other than those indicated by Commission's Exhibits 1 through 8?

A. Yes, sir; a few.

Q. Mr. DeGorter, where do you obtain the furs in your products that you sell in your store?

A. Some of them we manufacture ourselves, some from local manufacturers, and local wholesalers and some of them from New York manufacturers.

Q. What percentage of your furs do you pur-

(Testimony of Jacques DeGorter.)

chase from New York?      A. That is hard to tell.

Q. Just give me an approximation, please; you won't have to be exact. [13]

A. I would say, to make it easy for you, about, over 25 per cent.

Q. Over 25 per cent of your furs are purchased from wholesalers or manufacturers located outside the State of California?

A. Yes, sir. And that figure, though, can be wrong; this is a guess.

Q. Yes; it could be more or it could be less.

A. It could be less, it could be definitely less, because we also buy in San Francisco, that is in the State of California.

Q. Now, you advertise your fur products; do you not, sir?      A. I did.

Q. You did; and you advertised them in the local Los Angeles papers, to wit: The Los Angeles Times and the Los Angeles Examiner?

A. Yes, sir.

Q. Is that correct?      A. Yes, sir.

Mr. Downs: I believe counsel for the respondent will stipulate that during the period covered by this complaint in this matter, the newspapers, the Los Angeles Times and the Los Angeles Examiner, in which the respondent advertised, had a circulation outside of the State of California.

Mr. Walley: It will be so stipulated.

Hearing Examiner Lipscomb: The stipulation is duly noted and accepted. [14]

Afternoon Session—1:00 P.M.

Hearing Examiner Lipscomb: The hearing will come to order. Mr. Downs, you may proceed with your examination of the witness.

JACQUES DeGORTER

resumed the stand and testified further as follows:

Direct Examination

(Continued)

By Mr. Downs:

Q. Mr. DeGorter, I would like to inquire of you as to some of the fur products that are imported. You have been in the business a long time and I imagine that you are somewhat of an expert on furs.

Is kid, or so-called kidskin an imported fur?

A. Can be a local fur or an imported fur. Kid is a young of the goat.

Q. They use the domestic goats for that?

A. They use some domestic goats, they use African, they use South American, but they certainly use domestic.

Q. How about the marmot?

A. The marmot is an imported fur as a rule.

Q. As a rule?

A. I don't know of any instance—there are marmots in the United States. [16]

Q. But they are not commercial grade; are they?

A. I don't know of any instance that I ever was aware of using native marmots for furs.



(Testimony of Jacques DeGorter.)

Q. Now, how about the baum marten?

Mr. Walley: If the Court please, I don't want to interrupt continually, but I would like to know what the purpose of this examination is. I believe that our stipulation has taken care of all of this material.

Mr. Downs: This still goes to commerce under the Fur Products Labeling Act. Certain furs are always imported, and where they are imported, it will follow that they will have been shipped in commerce, and I propose to show which of those furs are imported, and it following that they have been shipped in commerce, and then that the respondent has in the conduct of his business, sold garments made from those furs, further establishing the jurisdiction of the Commission under the Fur Products Labeling Act. [17]

\* \* \*

Q. Well, you have stated, Mr. DeGorter, that you purchase approximately 25 per cent of your fur products from sources in New York; is that correct? A. Yes.

Q. Now, the majority of it you purchase locally here in California; is that correct? A. Yes, sir.

Q. Now, are some of those furs that you have purchased locally, those products made of imported furs? A. Yes, sir.

Q. Could you give us a fair estimate as to the percentage of those that are imported?

A. That is very hard to say.

(Testimony of Jacques DeGorter.)

Q. I know. [21]

A. The majority of fur we are dealing in the popular line, the muskrats, and in the better price line, minks; and muskrat and minks are both United States products for the majority. The number two item, I would say, the popular line, is marmot and squirrel; and I would say that the majority of these are imported; so in order to get a good percentage, might be five per cent, might be seven per cent; but I would really have to make a study and I will be in a position to give you a fair answer to that.

Q. But, at any rate, some of the furs that you purchase locally here have been imported furs?

A. That is correct, sir.

Q. Now, have you advertised, sold and offered for sale fur products that were shipped to you in California from your suppliers in New York?

A. Yes, sir.

Q. And you have advertised those furs in the Los Angeles Times and the Examiner?

A. Yes, sir.

Q. During the period of Government's complaint?

A. Yes, sir. [22]

\* \* \*

Mr. Downs: May I advise counsel what it is?

Under Paragraph 5, Subparagraph C of the complaint it states, "Misrepresented the grade, quality, or value of certain of said fur products by the use of illustrations depicting higher-priced or more

(Testimony of Jacques DeGorter.)

valuable products than those actually available for sale at the advertised selling price, in violation of Rule 44(f) of the aforesaid rules and regulations.”

It is my purpose to show that the garments depicted here in Commission’s Exhibit 9, I am trying to show that those garments, those depictions are garments that are of a higher [29] quality than the garments that were for sale as advertised in the exhibit.

Mr. Walley: In that case, if the Court please, I am going to object to any further questions along this line of interrogation on the grounds that it is not material or relevant to the issues made out by this complaint under the Fur Trades Labeling Act, and all of the rules and regulations promulgated thereunder, properly promulgated thereunder, by the Federal Trade Commission.

This is going to be my main point, and I would just as leave, if the Court would permit me to argue my position now, in support of this objection, which as I say, will be the only point of objection, perhaps, that I have, and will be my argument at the close of this hearing. I will not repeat it in the future.

Hearing Examiner Lipscomb: Do you wish to place it on the record?

Mr. Walley: That is correct, your Honor.

Hearing Examiner Lipscomb: You may proceed, sir. You have no objection?

Mr. Downs: No.

Mr. Walley: If the Court please, it is our posi-



(Testimony of Jacques DeGorter.)

tion, I think it takes no citation of an authority to support the position that any administrative body has no authority or no jurisdiction to pass legislation, nor has the Congress any [30] authority to delegate to an administrative body the right to legislate. Therefore, an administrative body can only pass such rules and regulations to carry out and to enforce an act of Congress as are necessary to carry out the intent and purpose of the act and to enforce it.

It is our contention, that assuming that be the law, that the Federal Trade Commission is without any authority or jurisdiction to promulgate Rule 44 as contained in their rules and regulations and all of the subdivisions contained therein. [31]

\* \* \*

Hearing Examiner Lipscomb: The objection which counsel for the respondent has raised is a very interesting one, a very serious one; in effect, it challenges jurisdiction in part of the complaint and the jurisdiction of the Commission that issued that complaint. It is a question which the Hearing Examiner would prefer to take under consideration before ruling. However, the objection rises as an objection to the introduction of testimony and accordingly, a ruling must be made forthwith.

Accordingly, the Hearing Examiner overrules respondent's objection to the admission of the evidence and will allow counsel supporting the complaint to proceed. This does not mean, however, that the Hearing Examiner will not reconsider this

(Testimony of Jacques DeGorter.)

problem upon his final consideration of the case when all the evidence is in and before him.

Mr. Walley: I appreciate that.

Hearing Examiner Lipscomb: You may proceed, sir. [46]

\* \* \*

Q. You might——

Mr. Walley: If I might interrupt for a moment, may we go off the record?

Hearing Examiner Lipscomb: Off the record.

(Discussion off the record.)

Hearing Examiner Lipscomb: On the record.

Mr. Walley: It is stipulated by respondent Jacques DeGorter that he violated the provisions of Subdivision (f) of Rule 44 of the Rules and Regulations and that the violations contained in this stipulation replace the violations charged in the complaint in Subdivision (c) of Paragraph 5.

Hearing Examiner Lipscomb: Does that meet with your approval?

Mr. Downs: Yes, sir.

Mr. Walley: It is further stipulated by said respondent that he has committed the acts alleged in Subdivision (d) of Paragraph 5 of the complaint.

It is further stipulated by said respondent that he placed in the Los Angeles Examiner and in the Los Angeles Times advertisements containing the language quoted in Paragraph 17 of the complaint.

It is further stipulated that with respect to the

(Testimony of Jacques DeGorter.)

foregoing three stipulations that respondent has not waived his right to attack the validity of the rule, of the rules and regulations referred to in the complaint as having been [52] promulgated by the Federal Trade Commission without authority or jurisdiction of the provisions and the purpose and intent of the Fur Products Labeling Act.

I think that for clarity where I referred to rule of the rules and regulations that should read Rule 44 and all of its subdivisions.

Hearing Examiner Lipscomb: Is the stipulation agreeable to both parties?

Mr. Downs: Yes.

Mr. Walley: Yes.

Hearing Examiner Lipscomb: And counsel is assured of his right to contest the validity of Rule 44, or any other rules that may be involved in these stipulations, that is preserved to him.

Off the record.

(Discussion off the record.)

Hearing Examiner Lipscomb: On the record.

Q. (By Mr. Downs): Mr. DeGorter, will you explain to us for the record your method of pricing your products, fur products, when they are received, sir?

Mr. Walley: That is objected to, if the Court please, on the grounds that it is irrelevant, immaterial and not competent. And the issues made out by the complaint and the rules and regulations properly promulgated by the [53] Commission un-



(Testimony of Jacques DeGorter.)

der the Fur Products Labeling Act, the grounds for the objection is the same which I have heretofore made. I don't believe it is necessary to repeat it at length.

Hearing Examiner Lipscomb: Your objection is duly noted and overruled. Counsel will proceed.

Mr. Walley: The objection will be to the line of questioning involving comparative prices and anything to do with prices.

Q. (By Mr. Downs): Will you proceed?

A. My merchandise, the stockroom is accompanied by a bill. The items will then be numbered in rotation and entered in the existing stock inventory. Tickets will be affixed to the garment, carrying the same number as has been put on the invoice in duplicate. Cost price is then in code put on the lower part of the price ticket. This is mainly done to help the office staff to establish the cost by taking the item out of the inventory again, checking on the cost.

Pricing is all done by me. There are a few different methods of pricing. There is a standard mark-up which we have figured out from 25 dollars to \$2,500. What the standard percentage in profit will be, there is a list prepared, indicating that if the cost price of an item is \$150, the normal selling price is an amount higher than \$150.

There are some cases that we just don't look into that [54] list. These cases are in the first place when we manufacture the item ourselves, in which case our profit mark-up would be more or less.

(Testimony of Jacques DeGorter.)

The price will be established according to the physical look of the finished product. This might involve artistry, being a step ahead of competition, a very lucky purchase; from all these reasons, or all these reasons taken into consideration, I would take the item and look at it and decide how much money it could bring, what would the consumer be willing to pay for it. It looks good, it can bring so much money, it compares very well with another item that is sold for that price.

In a case like that, and in many of these cases, the cost price does not interest a furrier at all. The cost price, though, will interest the merchant, because he could not rest for the fact that item could not be sold because he over-estimated the amount that he thought he might get for it.

In order to overcome this, for 38 years I made it a habit to, a practice, to indicate in a certain code to my sales people that on the less favorable circumstances, this item can be sold for a code price, which was marked on the ticket. I followed this system up till today. I also use these code prices to meet promotional advertising of competitors. I might step in on Monday morning in my place of business with the Sunday papers in which the one store in town advertises a certain item that normally is sold for \$150 for \$88, and in our [55] store as a special promotion. I am talking about big stores, for an item for \$250 that we normally try to sell for three-ninety, four-fifty. That day, I would tell right at the start of business to my

(Testimony of Jacques DeGorter.)

manager or the employees, "Store A is selling scarves today for \$88, let's sell all our scarves for the low." They know that the low means the lowest possible profit that we are willing to take on that item, so that we presently are just covered for overhead expenses and service that we have to give to the customers.

And at the same time I will say, "Well, the department store here on the other side of the street has a muskrat special for \$122, so don't let anybody undersell you with muskrat." Experience taught me that when these big stores have the big ads in, the people are asking for these items, just acting as if they did not see the ad of the other, but they just probably came back from the other store and they want to see if they got a real buy there or not, or if they could do any better.

So, by me watching these trends, they will be able to do better or just as good, even if I have to sell without profit.

I have to give this lengthy explanation because it seems to be a very easy question, how do you price this merchandise; but it is not so easy to answer, because situated between the May Company, the Broadway, the Robinson, Bullock's and Haggerty's and other two stores that are selling furs, we had [56] days that there wasn't almost one item that we could sell at a regular price without coming in friction with one of their promotions.

With that thought in mind, we start out pricing



(Testimony of Jacques DeGorter.)

our merchandise with a decent, good mark-up, as high as we expect the customer would be willing to pay for a good made fur garment, and made out of good quality. It is too bad to admit, too often we are not in a position to get that price, due to competition. So, based on this explanation, that is how our pricing is done.

Q. Now, as I understand it, you put one price on your merchandise in a non-coded manner so that anyone can see it?      A. Yes, sir.

Q. And then you also put on that price tag in code another price?      A. Yes, sir.

Q. Do you put one or two?

A. I put two of them.

Q. Two coded prices on there, each of them progressively smaller?      A. Yes, sir.

Q. Now, is this higher figure which is non-coded, is that representative of what you consider to be the value of the garment?

A. That is representative of our regular selling price. The [57] value of the garment is the price I am willing to pay for it, that is what I consider the value.

Q. The price you are willing to pay for it?

A. I am willing to pay for it, that is right; that is what I consider the value of a fur garment.

Q. Well, now, when you advertise a fur garment as being a certain value but for sale at a lower price, well, now, obviously the value that you placed on it there is not what you have paid for it?

A. No, certainly not; certainly not

(Testimony of Jacques DeGorter.)

Q. Is that value that you place in that ad the price——

A. Referring to a retail price, because the ad is prepared for the retail customer.

Q. That's right; and so that value is the price that you have put on that garment?

A. As a regular selling price.

Q. As a regular selling price in a non-coded manner?

A. Yes, sir.

Q. Now, do you have any way of ascertaining, or have you ascertained the percentage of garments that you sell at the non-coded price as compared to the percentage that you have to break that price on and sell it for one of the two lesser coded prices?

A. I can answer you this very clear. There is something else involved in it. When we talk about the second price, we, [58] here in Los Angeles they have the habit of month-end sales, I don't know, every month end, two days before the end of the month and carried over till the first day of the next month, all big stores have so-called month-end sales and have then special values and special discount merchandise on sale. That is the Downtown Businessmen's Association promotion.

So, the second price, which Mr. Anderson just referred to, is what we call our month-end sale price. So on our month-end, it became the habit that we never would get the printed price. When I refer to the printed price, that is the regular readable price. And that then we would get that second price.

(Testimony of Jacques DeGorter.)

Now, as an inducement for the sales people in order to get our regular price, we will give them more commission for the higher price than they would get for the lower price. The commissions once were two and three per cent, and later on have been changed to two, three, and four per cent. Still later they have been changed to two, three, and five per cent. That means on month-end they would normally—no, the second lowest price would normally constitute that three per cent sale, the lowest, the two per cent commission sale, and the printed a four per cent.

Now, on month-end during sale periods, when we had special promotional merchandise in ourself, we had merchandise priced at a sale price, the printed price was a regular sales price, merchandise just came fresh in, there wasn't any possibility [59] for the sales people to get the higher price, in that case they only got a two per cent commission. So when we started to accumulate these figures, we felt over that period that we couldn't get a standard percentage, but I have a commission book with me that I hope I can have photostats taken of it, if we still use it because it is still in use, you see, we are marking in it today, so I can't present it as testimony because the commissions of tomorrow have to be paid out of this book.

But, in back of every sale you will find if that sale was made, like here, just take a page, here on page 1, 2, 3, that is the return, 4, 5, 6, 7, 8, 9 sales



(Testimony of Jacques DeGorter.)

on this page for one sales person. Out of nine sales, three have been made at the low price, they are two per cent commission; one, two, three, four, five have been made at the month-end, at the middle price, and one has been made at the printed price.

So here out of nine sales we once got a five per cent sale, one, two, three, four, five times we got a three per cent sale, and three times we got a two per cent sale. Is this clear to you?

Q. Oh, that means that out of nine sales made on this particular date, only one sale brought the plainly ticketed price; is that correct?

A. Yes, sir.

Q. The other eight sales were at the coded [60] prices?

A. Yes, sir.

Q. Either the second or the lowest coded price?

A. Yes, sir.

Q. Is that approximately the percentage that this runs?

A. During the summer period; yes, because everybody, and as long as I am in the fur business, we had summer sales and August sales and slow season discounts and off-season sales, that is during the summer, that is in the months of March, April, May, June, July and August. These are months that you have to induce the customer by making her purchase because she expects to buy for less than she would have to pay around Thanksgiving Day or Christmas, otherwise, she waits until then.

When the customer comes in my place today and says, well, "I would like to lay away, buy on the

(Testimony of Jacques DeGorter.)

lay-away plan, a fur cape. I don't need it now, I want it for Thanksgiving." And we show her something, she looks at the ticket, she would ask me, "Well, this is \$275, how much would that be around Thanksgiving?"

Now, according to you, I would violate the law, I would say around Thanksgiving it would be probably \$100 more, that is violating the law the way you look at it. I won't tell her that, because that is really untrue, I say around Thanksgiving that is \$275, but if you buy it now, you will probably only have to pay \$225 so you save yourself some nice money. If I would tell the woman well, no, it would cost the same today as Thanksgiving, then she would say, thank you, sir, and you would [61] just starve to death. She would say, "I will be back around Thanksgiving, why should I give you my money now." This is an established method all over the world.

Q. Well, now, you say during the summer months, I believe in the trade you refer to it as breaking the price; is that the way you refer to it?

A. No; we never say break the price, we only talk about promotional, and we talk about slow season. I don't believe in price breaking, I believe in profit, because you can't give a customer service if you don't make profit, and it is dependent about service, I can keep that customer's fur looking good for ten years if I get my price for my profit, without her even knowing. Every time she brings it in to storage I work on it, that is part of my profit,

(Testimony of Jacques DeGorter.)

so I can't see how anybody can regulate my profit.

Q. Would you say that during the off-season or the summer months you only realize the plainly ticketed price in about 10 per cent of your sales?

A. I would say yes, I would be satisfied if it is not less than 10 per cent. That doesn't mean that is right, I would have to look at it, it may be more, but I still would be satisfied if it is not less than 10 per cent during the slow season.

Q. Then, during that season in approximately 90 per cent of the cases instead of selling at the plainly ticketed price you sell at one of the coded, lower coded prices; is that correct? [62]

A. That is correct on certain circumstances. See, we have a lot of Mexican trade and a lot of Chinese trade and if we just get a wave of Mexicans and Chinese in the traveling season, we never get our printed price, it is impossible to sell these people when they read \$250, they want it for less, they just walk out, we never see them again. So, if we just have a lot of tourists, Mexicans, or a lot of Chinese trade and a couple of weeks the percentage might be less.

Q. I see. Now, during what you call the fur-selling season——

A. Yes, sir.

Q. ——what percentage of sales do you realize the plainly ticketed price and what percentage do you sell it at one of the lower coded prices?

A. That depends completely upon the competition, the advertising of the competitors. We are all set and expectant to get our printed price, but two



(Testimony of Jacques DeGorter.)

and two are very often five in the fur business, it comes out different.

Q. You say you get that printed price, plainly printed price 50 per cent of the time during the first selling season?

A. No; but considerably more often than ten per cent.

Q. But you don't get it 50 per cent of the time?

A. I don't think so.

Q. So, in over half of the cases half of your sales, then, during the fur-selling season you have to sell below the plainly ticketed price? [63]

A. I couldn't say that definitely, but I take into consideration that most sales are really made during month-end.

Q. Yes.

A. And I just figure fast that month-end sales won't be printed price sales, and the other days of the month that are regular selling days, we might have two-thirds printed and one-third below.

Q. Well, now, mentioning the month-end——

A. Substantially, let's make it this, a substantial number of sales are made at the printed price.

Q. Well, now, you say a substantial number; is that half of them, more than half?

A. I would say more than half.

Q. How much more than half?

A. I couldn't say without consulting my records.

Q. Would it be 55 per cent, 60 per cent?

A. Might be; yes.

Q. Would it be 90 per cent?

(Testimony of Jacques DeGorter.)

A. I don't think so.

Q. Now, you mention these month-end sales, and those are the sales during which you sell them at one of the coded prices; is that correct?

A. Yes, sir.

Q. In preparation for that sale, do you remove the plainly ticketed price and put on there one of the coded numbers in a [64] plain manner?

A. No; I couldn't.

Q. You leave the——

A. Leave the price on and that is the reason we instruct the——there are two reasons for that, and I want to explain this fast to you. We might get a CB, that means a come-back. The customer does not decide for a fur coat so fast, so the sales person, a woman comes in and wants to see a certain sales person and says, "Last week you showed me a little mink jacket for \$450. I now brought my husband, I want to take another look at it."

Well, in all the preparatory work would be completely lost, and this is not an exception, this is a rule, that they shop before they decide, so when the woman comes in then the sales person is not going to tell her, "Now, here is that \$450 jacket you saw last week, but the boss told me this morning I can sell it for \$350." He is not going to tell her, he has already worked two months with the customer. That is one of the main reasons we can't remove the ticket.

The second reason, if we wanted to, we wouldn't have the time, we have seven, eight hundred units

(Testimony of Jacques DeGorter.)

in stock, and I would be writing tickets from morning till evening. But that is one of the main reasons that you just don't do that, you want your comebacks, they walk around with telephone numbers, business cards from people, they will take themselves three, four, five [65] months to shop for a fur. [66]

\* \* \*

Q. Now, I will hand you what has been marked for identification as Commission's Exhibit No. 12 and ask you if this is one of your ads?

A. Yes, sir. [67]

Q. Now, this ad shows values up to \$189, now \$68?

A. Yes, sir.

Q. Now, does that \$189 figure appear on your garment?

A. At the time we sold it; yes, sir.

Q. Yes, sir?

A. Yes, sir.

Q. That was your plainly ticketed price; is that correct?

A. Yes, sir.

Q. And did the \$68 appear on your garment at that time?

A. Probably in code.

Q. Well, that would be the lesser of the three prices that your price ticket carried for that particular garment; is that correct?

A. I think that is correct, sir.

Q. And that would apply to all the seven items appearing in Commission's Exhibit No. 12?

A. Yes, sir. [68]

\* \* \*



Hearing Examiner Lipscomb: The hearing will come to order.

JACQUES DeGORTER

resumed the stand and testified further as follows:

Direct Examination  
(Continued)

By Mr. Downs:

Q. Mr. DeGorter, when we adjourned yesterday you were to bring in some records indicating your support for the advertised values appearing in Commission's Exhibits 12 and 13 for identification. Do you have that with you now, sir?

A. Yes, sir. When I started preparing last night a new setup as the one I had for 1953, a new setup for 1953, I was half way or one-third of the way through with it, I found that in 1954, Mr. Anderson, the investigator, advised me that if we just followed the procedure of the department stores, which put their selling price——

Mr. Walley: Mr. DeGorter, I don't think you ought to go into that. I will bring that out on cross-examination.

The Witness: I wanted to substantiate these bills.

Mr. Walley: Well, let's get the information that the Government wants now and I will ask you about that, unless you have no objection to his explaining all this?

Mr. Downs: I have no objection to him explain-

(Testimony of Jacques DeGorter.)

ing, [73] because obviously you would have him explain later.

The Witness: We started then, the end of '53, started putting, or selling at the prices that we put on the tickets on the bills, and that is why I brought all the bills. I stopped doing this until I went so far, thinking that all of the information you want you will find on all the purchase invoices for 1954.

Q. (By Mr. Downs): I see.

A. Here is an invoice, this is the note, \$3,500, this invoice is paid. Here are the individual items, every item is numbered. Here you will find the cost price and here you find the selling price. These two prices refer to the prices that are on the coat, on the ticket, the last price is the printed price.

Q. I see.

A. That you find for every bill. Here is a silver-blue mink stole, this is the cost price, fifteen ninety-five is the selling price, the other price is thirteen seventy-five eleven fifty. That is a complete copy of every sales ticket. So when we refer to value, we refer to the estimated, our estimated price that we expected to get for it, which we put on the ticket at the time the merchandise came in.

Q. That was the plainly-ticketed price?

A. Plainly-ticketed price. And you find that on anything, so [74] it is up to you to ask me and I would be in a position to give you any one that you want out of here, and I thought that will solve the problem.

Q. Will you then show me the records pertain-

(Testimony of Jacques DeGorter.)

ing to the mink clutch capes and stoles valued up five ninety-five, now two eighty-eight, appearing in Commission's Exhibit 12 for identification?

A. Here is a series of mink clutches, stoles and capelets, 18, a lot of 18, which we bought for \$3,870, the 18. We priced these in here, and here are the notes which this bill is paid with.

Q. Yes.

A. I mean, we priced these in two groups, we priced them for six ninety-eight and six twenty-five. The respective low was at that time five seventy-five and five twenty-five, so I think that covers it completely, even if you take the second price, the cost price of these pieces.

Q. Your expected low was four seventy-five?

A. Not four seventy-five, five seventy-five and six ninety-eight; six ninety-eight was the three prices, so on that ticket of that clutch you could find six ninety-eight, on that ticket you could find six twenty-five, and these very lowest.

Q. Now, did you sell any of these garments at the higher price there?

Mr. Walley: I am going to object to that, if the [75] Court please, on the ground that it is immaterial and irrelevant, not within the issues made out by the complaint so far as the act and the proper rules and regulations promulgated under the act are concerned for the reason that the rule under which this evidence is sought to be adduced is Rule 44, which, while it is under attack, we as-



(Testimony of Jacques DeGorter.)

sume for the purpose of this examination is a valid rule.

That rule provides in Subdivision (a) thereof, "Nor shall any person advertise a fur or fur product at prices purported to be reduced from what are in fact fictitious prices nor at a purported reduction price when such purported reduction is in fact fictitious."

The Commission in issuing this complaint has placed a construction upon the word "fictitious" which we feel is not justified by the language of the Fur Products Labeling Act or of the rules promulgated thereunder, assuming for the purpose of this discussion that 44 is a proper rule.

It, therefore, becomes material under this complaint, properly construed under the act and the rules, whether or not any prices indicated on the tickets by the respondent were fictitious prices. The question which seeks to elicit the answer, did you sell any furs at that ticketed price, is not a proper or material question, because whether or not a fur was sold at the highest ticketed price does not establish the fictitiousness of the price. [76]

My point is based solely upon the definition of the word "fictitious" both in its legal connotation and its generally accepted connotation.

"Fictitious," as I have been able to define it from dictionaries and cases, is something that is imaginary, something contrasted with real, that is, imaginary as opposed to real. So that the only evidence we are concerned with here in order to establish

(Testimony of Jacques DeGorter.)

whether or not the highest price on the ticket was a fictitious price is the basis of ascertaining that price, how the respondent obtained the price, whether he just reached up in the thin air and got a price, which he said this was going to be the price of the fur, or whatever the basis may have been.

But, asking the witness whether or not he ever sold a fur at the highest price in no way bears upon whether or not that price was fictitious, whether it was imaginary or real, and that is the basis of our objection.

There has been evidence adduced by the Government from this witness with respect to the basis for establishing an openly ticketed price in connection with the operation of Pelta Furs, and answer was given to that question. This question, I believe, is not material to establishing whether or not the prices were fictitious or real.

Mr. Downs: Mr. Examiner, it is our purpose to show that this plainly ticketed price is in fact a fictitious price [77] because it is an imaginary price, it is a prayerful or hopeful price, it is a price that respondent prays he can get, hopes he can get, but I submit that as the facts of the case unwind it will be shown that he realizes that price in such few instances that it will be obvious that that price is what can properly be called a bargaining price from which respondent will back up in order to obtain a sale, and it is also used for the purpose of advertising and putting on a sale at

(Testimony of Jacques DeGorter.)

reduced prices or to designate the values of the articles advertised or the savings to be realized during such sale.

I think that it will be plainly seen that this plainly-ticketed price is in fact an imaginary price that the respondent would like to get, but the few instances in which he gets it shows that it is just a bargaining price more than the actual regular price of the garment.

Mr. Walley: I think that what the Government overlooks, at least with respect to the exhibit in connection with which this question was asked, is that the comparative price used in the exhibit is or is not fictitious, depending upon the establishment of the price at the time the ad is placed in the paper. In other words, if at the time this ad is put in the paper it is indicated that this fur was priced at so much money, if at that time that price was obtained by whatever process, it may be proper to establish it by this evidence.

But, there is evidence in the record that [78] these prices, the comparative prices contained in the newspaper ad were established by the respondent when the fur was first received by him from the wholesaler. He established three prices, it is true, one of them was this high comparative price.

When he placed the ad in the paper at some later date, as is indicated by the exhibit and the date, at that time he used as the comparative price, not a price which he then established in his mind,



(Testimony of Jacques DeGorter.)

but a price which he had placed upon the article when first received by him and placed in stock. I think in view of that testimony, with respect to the advertisement at least, if not the tickets themselves, you cannot use the selling price as establishing a fictitious price. That is a point the Government overlooks.

Hearing Examiner Lipscomb: I don't care to have any more argument on the question, please, gentlemen.

The weakness of respondent's position is that the objection is based upon irrelevancy. You may have a good theory, but for the present purposes the Hearing Examiner would like to get all the facts that may be relevant. He doesn't want to make any nice close rules on relevancy. Therefore, the objection is overruled and counsel may proceed with his examination. [79]

\* \* \*

Q. May I ask you one question that might clear this up, Mr. DeGorter? In placing this ad, Commission's Exhibit 12 for identification, in placing that ad in the newspaper and placing the values on these various garments that you have listed here, did you at that time take into consideration whether or not you had sold these garments at the purported value figure?

A. I did not, I just took the garments off of the bin and made a group ready for sale.

Q. It did not make any difference to you

(Testimony of Jacques DeGorter.)

whether you had sold them for this value price or not?      A. No.

Q. I see.

A. I might have sold them, though.

Q. Some of them you might have, and some of them you might not have?

A. I didn't put any emphasis on it.

Q. You didn't check to ascertain that?

A. No. [80]

Q. Now, do your records disclose to whom you sold at the figure two eighty-eight this mink clutch cape or stole?

A. Natural mink clutch sold for \$270.90, plus the tax.

Q. Would this be within the items that you had advertised in Commission's Exhibit 12 for identification, sir?      A. Yes, sir.

Q. So this garment that you sold here for \$270 was purported by you to have a value of \$595, is that correct, sir?

A. Up to five ninety-five, sir.

Q. Up to five ninety-five?

A. Is five seventy satisfactory for you, sir?

Q. I beg your pardon.

A. Is five seventy satisfactory? Here you have the number, number of the garment is 17552—177552; here is the price, five seventy-five; here is the name of the manufacturer.

Q. That was your plainly-ticketed price, five seventy?      A. Yes, sir.

(Testimony of Jacques DeGorter.)

Q. Just to check one more of these items, if we may, Mr. DeGorter. A. Yes, sir.

Q. On Commission's Exhibit No. 13 for identification there appears, "Precious mink jackets and coats values up to \$3,500, now \$1,488." Can we see the papers on that?

A. I didn't sell them, sir, as far as I could find last night I must not have sold them, neither for the high nor for [81] the low. I didn't find any, I couldn't find \$1,400, those are still for sale.

Q. How about the deep mink capes, jackets and stoles valued up to nine seventy-five, now four eighty-eight?

A. I think I can help you on that, sir. Seven ninety-five, eight ninety-five, seven fifty. We only had two prices, seven ninety-five, eight ninety-five, and here is the original memo we had, seven ninety-five, eight ninety-five. This was written by the bookkeeper I had at that time, this I wrote myself.

Q. Now, just for the record, on your purchase memo, what was the plainly-ticketed price that was noted? A. Eight ninety-five, sir.

Q. Eight ninety-five was the plainly-ticketed price? A. Yes, sir.

Q. And that was represented as having a value up to nine seventy-five, now four eighty-eight, that is correct, is it not? A. Yes, sir.

Q. And then you had only one coded price on that garment? A. It seems.

Q. Below the eight ninety-five?



(Testimony of Jacques DeGorter.)

A. It seems I had only one coded price.

Q. Yes.

A. That was sold for the advertised price.

Q. And that particular garment was shipped by you to Ohio, is [82] that correct, sir?

A. Correct, sir.

Q. And sold here in Los Angeles?

A. Yes, sir. I want you to know it was in another year than you originally made out your state of proof——

\* \* \*

Q. Mr. DeGorter, I hand you what has been marked for identification as Commission's Exhibit 14, being a page from the Los Angeles Examiner, dated May 17, 1953. There appears on this exhibit a Pelta Furs ad, is that your ad, sir?

A. Yes, sir. [83]

Q. This ad states, "Complete stock now on sale, half price, present unchanged price tags remain on garments, you may deduct one-half."

Were you selling all of your merchandise at that time at one-half of your plainly-ticketed price?

A. No, sir, it was indicated exactly in numbers how many and what was sold. It says here 25 beautiful coats and jackets and the type of fur, it says here how many stoles, capes, and the different types, 150 stoles and so on, the different types.

Q. The merchandise that was on sale at one-half of the plainly-ticketed price, did that have an inventory of \$250,000, sir?

A. Certainly.

Q. It did?

(Testimony of Jacques DeGorter.)

A. It did. Mr. Anderson checked it.

Q. Now, that was merchandise that was on sale at one-half of the plainly-ticketed price, not any of the coded prices? A. No, no. [84]

\* \* \*

Q. Mr. DeGorter, I hand you what has been marked for identification as Commission's Exhibit No. 15, which appears to be a portion of a page from the Los Angeles Examiner, dated November 22, 1953, in which there appears an ad by Pelta Furs, is that one of your ads, sir?

A. Yes, sir.

Q. I will call your attention to that portion of this ad which says, "All advance 1954 styles, holiday gift furs now at cost and below cost." What merchandise were you selling at cost and below, were you selling all of your coats, all of your fur products?

A. All gift furs, sir. There was a group of collars, muffs, muff bags, and small capelets that we had as an introductory offer at cost or below cost.

Q. Were you selling all that you had in that type of garment at cost or below cost, or were you selling only a certain number of them?

A. Originally all. Then Mr. Anderson asked us after he had inspected, to change the ad in a group, which we did, following it up, it says a group of 1954 styled holiday gifts. But [85] originally we started off, but he thought it was better if we put on a group, which we did in the next ad.

(Testimony of Jacques DeGorter.)

Q. But at any rate this included only those small fur items and not capes, stoles, and coats?

A. Sure, some capes and capelets and some merchandise that we really wanted to close out in a pre-holiday sale.

\* \* \*

Q. I hand you what has been marked for identification as Commission's Exhibit 16, which appears to be a portion of a page from the Los Angeles Times, dated September 26, 1954. Mr. DeGorter, there appears thereon an ad by Pelta Furs, is that one of your ads?      A. Yes, sir.

Q. Now, this ad says, "Pelta's sale of mink, manufacturers' [86] financial sacrifice, many at cost, many below cost, many marked regardless of cost." Were you selling only a portion of your mink stock at these prices, sir?

A. I don't know, I couldn't answer that question, because it says, "Many at cost, many below cost, and many marked regardless of cost." That means there is a small—since the ad only advertises up to \$388, I don't think it included the whole inventory.

Q. You would have some capes and stoles, mink capes and stoles which would sell for more than \$388, would you not?

A. Sure, we would still have that one for \$3,000.

Q. That's right.

A. Which we didn't sell.

Q. Now, what is meant by this, "Manufacturers' financial sacrifice," Mr. DeGorter?



(Testimony of Jacques DeGorter.)

A. At that time I had—that was in 1954, yes—I had some consignment merchandise from a manufacturer who told me, “I would like to participate in your promotion, and I will quote you prices that are considerably below cost,” below his cost, in order to raise some money, so we worked the sale, that is done very often. [87]

\* \* \*

Q. I hand you Commission’s Exhibit 21-A, Mr. DeGorter, and ask you what that is, sir?

A. That is an invoice of Cutler & Sons, New York.

Q. And what is the item number of that?

A. 16337.

Q. And what was the purchase price of it, sir?

A. \$150.

Q. And what were the coded prices on that, sir?

A. Two ninety-eight, three seventy-five. There was only one coded price—pardon me—only one coded price, two ninety-eight.

Q. Two ninety-eight, and what is the date of that invoice?      A. September 24, 1953.

Q. I will hand you Commission’s Exhibit 21-B for identification, and ask you if that is your sales slip covering that item?      A. Yes, sir.

Q. And how much was that sold for, sir?

A. \$303. [107]

Q. That is including the tax?

A. Including the tax.

Q. And when was it sold, sir?

(Testimony of Jacques DeGorter.)

A. It was sold October the 2nd, 1953.

\* \* \*

Q. I hand you Commission's Exhibit 22-A for identification, Mr. DeGorter, and ask you what that is, sir?

A. That is an invoice of Birnbaum & Willner.

Q. And does that carry Item No. 16226?

A. Yes, sir.

Q. And what was the purchase price of that item?

A. Sixty-nine fifty.

Q. And what were the three coded prices for that item?

A. Two coded prices. [108]

Q. The two coded prices and the plainly-ticketed price?

A. One fifty-nine, one ninety-eight, two forty-nine.

Q. The two forty-nine was the plainly-ticketed price?

A. Including the tax, including 20 per cent tax.

Q. I hand you Commission's Exhibit 22-B for identification, and ask you if that is the sales slip for Item 16226?

A. Yes, sir.

Q. And what date was that sold, sir?

A. September 29, 1953.

Q. And for how much was it sold, sir?

A. For \$159, \$163.77, including tax.

Q. Including tax. Now, you mentioned that your two forty-nine plainly-ticketed price included tax, sir?

A. Yes, sir. [109]

\* \* \*

(Testimony of Jacques DeGorter.)

Q. I hand you Commission's Exhibit 24 for identification, Mr. DeGorter, and ask you if that contains—and ask you what it is, sir?

A. Invoice of L & L Furs, New York, from November the 5th, 1953.

Q. That was to Pelta Furs?

A. That is to Pelta Furs.

Q. Does that contain Item 16458, sir?

A. 16458, yes, sir.

Q. And what did that item cost you, sir?

A. Forty-nine fifty, sir.

Q. And what were your three prices on that, sir?

A. Ninety-eight, one forty-eight, one ninety-eight.

Q. And you don't know what it was sold for?

A. No, sir. [111]

\* \* \*

Q. Mr. DeGorter, we have had your testimony here regarding your method of placing two coded and one plainly-ticketed price on your fur products. How long do you keep the item in stock before you will sell it at one of the lesser or so-called coded prices?

A. That is very difficult, sir. There is no set time for it.

Q. No set time?

A. If we get it just before the end of the month, before the month-end sale, we might the next day already offer it for less, and two days later come



(Testimony of Jacques DeGorter.)

back to our original price. If we get it and find that our competitors are selling it for less, like I explained to you before, we might right away instruct the sales help to sell it for less, until such time that we have no competition any more with it, no price competition.

Q. Now, we will use a hypothetical situation, assuming that on the 14th of the month you get in a fur product and you put your three prices on there and you hang it up on your rack and immediately thereafter someone comes in and will not buy it at the higher price, but says, "I would buy it at another price," which happened to be one of your coded prices, would you sell it to him?

A. Certainly.

Q. At any time you can sell one at the coded price you will, [113] is that correct?

A. When they make us an offer, sir, and show money, then we talk very nicely and sell it.

Q. That is what you are in business for?

A. Yes, sir, a merchant, sir.

Q. Now, another question. Yesterday, I believe you said that when you run the ads in the newspapers showing a sale, that you never change the ticketed price of the sale merchandise, is that correct?

A. I wouldn't say never. As a rule I don't, but some items that I don't expect ever to sell for the printed price, I change the ticket.

Q. Well, now, we will use another hypothetical situation. You have an item that you have adver-

(Testimony of Jacques DeGorter.)

tised in the paper as a two ninety-five value, four hundred dollars and fifty cents, and now you have a garment with a plainly-ticketed price of \$295, is that correct?

A. Well, this case is not correct because we never advertise one particular item, we always advertise a group.

Q. Yes. Well, you have a group that range——

A. One item in that group, you mean?

Q. Yes.

A. We have an item in that group that is priced how much?

Q. Two ninety-five.

A. Two ninety-five. [114]

Q. And in your paper it says \$150?

A. Yes, sir.

Q. Well, now, when the customer comes in as a result of seeing that ad to purchase that coat, how does she know which one it is, sir?

A. The ticket shows her that was \$295, and she can get it now for \$149.

Q. If she tells you she has seen the ad, if she wants the \$149 coat?

A. We show her the one that has 298 on the ticket, the tag described in the ad and available at a price for 149.

Q. Well, now, what happens in a situation where the customer comes in and looks at that same garment but she has not seen your ad, do you attempt to obtain the 295 price for it at first?

A. We have never a particular garment up for

(Testimony of Jacques DeGorter.)

the ad. We give some of our inventory for that price and some we expect to get the higher price for it. If the customer comes in and wants to see a ranch mink stole around \$295, we are not going to tell her, "Well, I was thinking yesterday about giving this for less." We just tell her this is the garment, \$298. If, after she says, "I saw you had some in the paper reduced from 298 to 149," then I show her a similar garment which is priced \$298, and I say, "O.K., this one is one that we meant to sell for \$149 in the ad." [115]

Mr. Downs: I see. Mark this for identification as Commission's Exhibit 26, please.

(The paper referred to was marked Commission's Exhibit 26 for identification.)

Q. (By Mr. Downs): Mr. DeGorter, I hand you Commission's Exhibit 26 for identification and ask you if that is a photograph of your store front, sir?

A. Yes, sir, that is correct.

Q. And there appears therein a sign, "Special Mink Values, Discount Prices," is that correct?

A. That is correct, that is put after the complaint was sent to me.

Q. What are these discount prices referred to in your window ad there?

A. I should answer this question, counsel?

Mr. Walley: Go ahead and answer it.

Hearing Examiner Lipscomb: Answer the question.



(Testimony of Jacques DeGorter.)

A. Yes. Well, that is a price with a seasonal discount from the regular value.

Q. (By Mr. Downs): Seasonal reduction, discount is a reduction; you mean by that that you are selling instead of for the plainly-ticketed price, from one of the coded prices?

A. For summer sale reductions, yes, sir. [116]

\* \* \*

Cross-Examination

By Mr. Walley:

Q. Mr. DeGorter, who has the job of determining what retail sales price shall be put upon any fur products which are received by Pelta Furs from manufacturers to wholesalers and put on your shelves for sale? A. I have.

Q. Do you have any policy which you use in determining what the retail sales price of any fur products which you receive in your place of business shall be offered to the public at?

A. I do.

Q. Will you explain that policy in arriving at the retail sales price?

A. In arriving at a retail sales price for any fur product, [117] fur garment, I first give it a physical inspection and determine what the public would be willing to pay for it, the public in general would be willing to pay for a garment of that special make and appearance. Then I compare that price that I have then set in my mind with the

(Testimony of Jacques DeGorter.)

cost price of the item. If that price is higher than a standard which I once worked out, for general purposes, I will price that as such. If it is not, I will keep to my standard practice, which is three times the cost price of the garment, including tax, and taking into consideration the guarantee we give, the service we have to give; some garments are more serviceable, we give a little higher markup, some garments don't wear so badly, we know we won't have any trouble with, we reduce the markup a little bit.

Q. Are there any variations in this three-time markup policy which you have?

A. There are.

Q. Will you explain some of the variations, some of the things which determine that you shall not use your three-time markup?

A. For very slow-moving items and also for items that I think I have a first on, a first means I am ahead of my competitor, have a good novelty, a good style, I might try to get more. Other items that I just don't want to carry too long in stock because of fashion reasons, I can mark that price a [118] little less. It is all a personal appreciation. Sometimes merchandise is bought in a group at the same price.

As an example, we buy squirrel belly garments in beige and in gray. Now, the grays fade very fast, even in stock, so we have to make a bigger profit on the beige, because we might have to lose money on the grays after they fade. There aren't two fur

(Testimony of Jacques DeGorter.)

animals alike that cost the same, one doesn't look half as nice as the other, and chances are that I will never get a normal markup on that one, so the good ones in the lot I will price a little higher.

Q. Now, in determining this three-time markup with its variations, do you take into consideration, then, the fact that you may not obtain the same three-time markup on all of the furs in a particular group of furs which you have purchased at a given time? A. I do.

Q. Now, when you determine that price, this price at which you will sell each one of these furs at retail, do you indicate on any of your records this particular price?

A. Since the end of 1953 we made it a habit to put that particular price on the bill on which that garment was invoiced to us.

Q. And that price is also put on a sales ticket which is attached to the garment, is that correct?

A. Yes, sir. [119]

Q. Now, do you anticipate—I believe you testified that you anticipated that you may not be able to get that price which is put on the invoice and on the sales ticket, which is visible to the public, for all of the garments that might have come in one group. Do you then arrange to determine a lower price at which you will sell any one of those fur products depending upon changed circumstances? A. I do.

Q. And you determine that price scale, do you not? A. Yes, sir.



(Testimony of Jacques DeGorter.)

Q. Do you indicate on any of your records what this lower price will be at which you will sell a given fur, depending upon changed conditions and circumstances? A. Yes, sir.

Q. On what record of yours?

A. On the sale invoice on which the garment was billed to us at the time we received it.

Q. And that is also put on the sales ticket?

A. Also put in code on the sales ticket.

Q. You are familiar with the method of selling furs in your place of business? A. Yes, sir.

Q. You engage in sales, do you not?

A. I do sometimes.

Q. All right. Have you also instructed your employees in [120] sales tactics? A. Yes, sir.

Q. Then you are familiar with the method by which they undertake to sell a fur?

A. Yes, sir.

Q. When you exhibit a fur garment to a customer, it is taken out of the rack?

A. Yes, sir.

Q. There is attached to that fur garment a sales ticket, is there not? A. Yes, sir.

Q. The customer wants to know what the price of the garment is; what price is indicated to the customer?

A. We show the ticket, she reads it. We will tell——

Q. Is she also told?

A. As a rule she takes the ticket herself.

Q. I see, and in discussion about the price, is

(Testimony of Jacques DeGorter.)

it indicated to the customer that this is the price at which the garment will sell?      A. Yes, sir.

Q. Now, you have indicated in your testimony that where you have a garment with a plainly-ticketed price and a coded price as well, which is lower than the plainly-ticketed one, that if a customer says to a sales person, "I will pay a price which is lower than the plainly-visible price," and the customer has [121] cash in hand, that you certainly will sell that garment at the lower coded price?      A. Yes, sir.

Q. Did you mean when you made that statement that the moment the customer says, "I will pay you so much money for the garment, I have the money," do you immediately recede from the plainly-visible price on the garment?

A. No, sir.

Q. Do you continue to try to convince the customer that this garment is worth a price which is indicated plainly as marked?      A. Yes, sir.

Q. Isn't it a fact that it is only after you or your sales people are pretty well convinced that the customer will not pay the plainly-visible price that you recede from that price?      A. Yes, sir.

Q. So that the manner in which you testified was no inference as to the rapidity with which you change the price of the garment?

A. Certainly not. May I add something to the method?

Q. You may discuss with me if you have something.

(Testimony of Jacques DeGorter.)

A. Well, no, go ahead, we won't take time.

Q. Now, Mr. DeGorter, about how many fur units, by units, I mean separate fur products, do you have in your place of business on the average, every month through the year, about how many separate units are there? [122]

A. I would say in the off season about 750, in the season, an average of around close to a thousand.

Q. That is an approximation?

A. Yes, sir.

Q. And you have approximately that many separate fur units at any given month?

A. Every one of them labeled.

Q. Do you have any recollection now, Mr. DeGorter, how many separate sales were made by Pelta Furs of fur products, fur units in the year 1953?

A. The year '53 we made 2,547 sales.

Q. 2,547. Would you have any recollection presently how many sales were made by Pelta Furs of separate fur units in December of 1953?

A. 367.

Q. And will you testify, if you have recollection, as to how many fur units were sold by Pelta Furs in November, '53?

A. 274.

Q. And can you give the sales for October of '53?

A. 255.

Q. And for the month of September, 1953?

A. 167.

Q. Now, according to testimony given here,



(Testimony of Jacques DeGorter.)

there were four sales made by Pelta Furs in the month of December, 1953, which furs were shipped out of the State of California, is that [123] correct?      A. Yes, sir.

Q. Were there any others in that month that were shipped out of the State of California?

A. I don't know, sir.

Q. There was evidence that one fur product was shipped by Pelta Furs out of the State in November of 1953. Do you have any recollection that there were any others?

A. Mr. Anderson checked. I have no recollection.

Q. At the time this evidence was obtained that was adduced here, Mr. Anderson was in your place of business?      A. Yes, sir.

Q. And how much time did he spend there in checking your inventory and your records?

A. Days and days, many days.

Q. Approximately?      A. Many days.

Q. Did he go over every garment which you had in your place of business at that time?

A. He did.

Q. Checked all the invoices against those garments?

A. Yes, sir. We gave him all the invoices.

Q. Now, Mr. DeGorter, when you sell to the customer in your place of business, does the customer tell you at the outset when she is talking about a particular fur that she lives in [124] any particular State?      A. No, sir.

(Testimony of Jacques DeGorter.)

Q. When does she generally, if she does, tell you that she is not from California?

A. After the sale is consummated.

Q. That is at the time when question of delivery arises? A. Yes.

Q. And as a rule these furs have to be altered in some way?

A. Some little alterations made, labels put on.

Q. Would you say in most cases that delivery cannot be had in the same day?

A. In most cases not the same day.

Q. And when the question of delivery comes up, is it then indicated by the customer that she does not live in California, if that be the fact?

A. If that would be the fact, it is indicated so.

Q. Then do you have discussion with her as to how you will make delivery of the fur?

A. Well, she will tell us how she wants it, air express, railway, whatsoever.

Q. In other words, in some instances she will indicate, "Well, you have them ship the fur to me, I won't be here to take delivery"? A. Yes.

Q. That is the first time that you understand from the [125] customer that the fur is not to be delivered here in California but is to be delivered elsewhere? A. Yes, sir.

Q. Mr. DeGorter, you do go back East, do you not, on a purchasing trip from time to time?

A. Yes, sir.

Q. When you go back there, do you ship the

(Testimony of Jacques DeGorter.)

furs which you purchase into the State of California yourself, do you make the arrangements?

A. No, sir.

Q. Who makes the arrangements to ship whatever furs you buy?

A. The manufacturer I buy them from.

Q. Have you ever during the time charged in the complaint here since 1952 purchased any furs from outside the United States?

A. No, sir.

Q. You have never imported any furs?

A. No, sir.

Q. From any foreign country?

A. No, sir.

Q. Now, Mr. DeGorter, when you place an advertisement in any one of the newspapers relative to a sale that Pelta Furs may be engaging in, when you indicate in that advertisement that the price at which you are selling a given group of furs is lower than a price at which you may have sold them [126] previously, from what source do you obtain this higher price which you indicate as being the value or a price at which you may have sold the fur at one time; what is the source of that price?

A. The price ticket.

Q. The price ticket which you have in your records?

A. Which I have compiled from my invoice.

Q. In other words, the time you place the ad in the paper you do not at that moment in your own mind evolve a price which is used as comparative pricing advertisement?

A. Definitely not.



(Testimony of Jacques DeGorter.)

Q. You go to your records? A. Yes, sir.

Q. And you obtain the price. Have you ever had occasion in the operation of your business where you have advertised furs for sale at a lower price than an indicated value or price at which you have previously sold, which advertisement is placed in the paper about the time you received a shipment of furs which you are advertising at reduced prices? I am talking about time element now.

A. I might have, I don't know for sure, but I might have. After I found out that a day or two after I received the merchandise, competitors were promoting a certain item for less than I originally priced it.

Q. Would it be true in those cases, Mr. DeGorter, that you [127] had already planned a sales ad and that you had prepared the ad or had the newspaper prepare it, you discovered that a group of furs which you just recently purchased was being offered for sale by some competitor?

A. Yes, sir.

Q. And would you then in that ad cover that situation by indicating a reduced sales price for these furs just received? A. I would.

Q. That is possible?

A. That is possible. I want to say this, I want you to take into consideration that it takes about three to four weeks to prepare an ad in the Sunday edition. The ad has to be in, is printed four days ahead and has to be in eight days ahead.

(Testimony of Jacques DeGorter.)

Q. Have you ever purchased, Mr. DeGorter, a group of furs with the intention of advertising them for sale as soon as the ad can be made at a reduced price?      A. No, sir.

Q. Now, Mr. DeGorter, assuming that you had sold all of your inventory in a given year at the plainly-visible price, which you have attached to each of the fur units, could you give us some idea what your percentage of net profit would be on your investment?

Mr. Downs: I believe I will object to that, Mr. Examiner, it is too conjectural, he hasn't sold them all at the fully-ticketed price, and I don't think that it has any [128] materiality.

Hearing Examiner Lipscomb: Read me the question, please, Mr. Reporter.

(Question read.)

Mr. Walley: It is easily ascertainable, if the Court please.

Hearing Examiner Lipscomb: I think the question is harmless, he may answer it.

A. The profit would be 13 per cent.

Q. (By Mr. Walley): Mr. DeGorter, do you happen to have with you any evidence of any sales made by you of advertised furs or fur units which were sold at the higher comparative price indicated in your advertisement, do you happen to have any?      A. Yes, sir.

Q. Will you please refer to them? I don't mean to confine you to any given year, Mr. DeGorter, if you have any in '53 or '54.

(Testimony of Jacques DeGorter.)

A. Here I have a list, about 58 of them from all of which I sold, about 50 advertised items which I sold at the higher comparative price, so-called comparative value.

Q. You have 50 items in this list?

A. Let me see, 60 items.

Q. Well, I don't know whether you understand my question.

A. Yes, these items are all sold at the higher comparative [129] price. Where it says mink cape value nine seventy-five, now four ninety-five, these have been sold for nine seventy-five.

Q. What period of time does this cover?

A. This is in 1953, before the going-out-of-business sale.

Q. And these were all furs that had been advertised by you in the newspaper as being on sale at a price lower than your regularly-listed price?

A. Later on, yes, sir.

Q. And that many had been sold by you at the higher comparative price indicated in the advertisement?

A. Yes, sir. More have been sold, but they don't reflect the ads, we sold plenty more at the higher price, but these are the ones that reflect the ads.

Q. The groups that had been advertised in the particular ad?      A. Yes, sir.

Q. Mr. DeGorter, when you instruct your sales people in the sale of fur units, do you tell them under what conditions or circumstances that they



(Testimony of Jacques DeGorter.)

can recede from the regularly-listed price on the sales ticket?      A. Yes, sir.

Q. Do they ever sell anything at a price less than the regular listed price except upon instructions from you that they may sell at one of the coded prices?      A. From me or the manager.

Q. From you or the manager. [130]

A. They have for good form, to ask the manager if they could move it, do some better with a certain item, because the customer in is not in a position to spend that much, her husband is a Federal employee or any other reason.

Q. Then, as I understand your testimony, sales people must try to sell at the regularly-listed price unless they have authority from yourself or your sales manager to sell at one of the coded prices?

A. Yes, sir.

Q. Mr. Murray is presently the sales manager?

A. Yes, sir.

Mr. Walley: I have no further questions.

### Redirect Examination

By Mr. Downs:

Q. Mr. DeGorter, you have stated here that if you sold all of your items at the plainly-ticketed price your next profit would be a 13 per cent return on your investment, is that what I understood you to say?      A. Yes, sir.

Q. How is that arrived at, sir; how do you arrive at that 13 per cent figure?

(Testimony of Jacques DeGorter.)

A. We took an average of three years before the going-out-of-business sale. The amount of business we did during these three years was between 220 and 250 thousand dollars a year. The general overhead expenses without any salary was [131] between 115 and 135 thousand dollars. If everything would have been sold for three times the cost, with the exception of higher minks, that are never marked up three times the cost, I am talking now of merchandise that costs more than a thousand dollars cost price, the net profit before depreciation of inventory would have been about 16 to 17 per cent, which you can figure out easily. If you cut each figure 235 thousand, less 135, 140 thousand expenses, since in these years we always have ended up with an inventory of between 35 and 50 thousand dollars, and it is a habit in the fur industry after the season is over to depreciate what is left of the inventory by 25 per cent, you come to the figure of 13 per cent.

That was made by my auditor, and he explained it to me.

Q. And this 13 per cent net profit, you are just repeating what your auditor told you?

A. No, I looked into these figures, it is not hearsay, I was sitting together with him, and I checked it. I even got figures if we would sell everything for the middle price, if we would sell everything for the low we would end up losing 8 per cent. If we would sell everything for the middle price we would end up with 4 per cent. If we would average,

(Testimony of Jacques DeGorter.)

make just as many sales at the high and the middle and the low, then we would end up with around 3 per cent, and that is about the case.

Q. That is about what you do? [132]

A. We sell, just, I think, half and half. We made a little bit more than 3 per cent, maybe probably 5 or 6 per cent lately, but the years before the complaint were the first basic years, we didn't have any full years to talk about. During the complaint we had to go back of the going-out-of-business sale, which disrupted the picture, after that we only had a fiscal year of five months because we broke up the partnership and then we had a new year of seven months again, so we took the three years before that period and that proves to us that based on that, I would say more than 50 per cent of the sales have been made at the printed price, at the price quoted to the customer.

Mr. Downs: That is all.

Mr. Walley: Nothing further.

Hearing Examiner Lipscomb: Do you rest?

Mr. Downs: I have no further evidence.

Hearing Examiner Lipscomb: And you rest respondent's defense?

Mr. Walley: Yes, respondent rests. [133]

\* \* \*



## COMMISSIONER'S EXHIBIT No. 12

discount sale

Tremendous Inventory

1000 Selected Furs

Priced Regardless of Cost!

Convenient LayAway Plan

Charge Accounts Invited

fine stoles and clutch capes

Values up to \$198 Now \$ 68

capes, jackets and spencers

Values up to \$250 Now \$ 98

stoles, capes and coats

Values up to \$350 Now \$ 128

mink clutches, stoles and capes

Values up to \$595 Now \$ 288

jackets, capes, stoles and coats

Values up to \$750 Now \$ 388

mink capes, jackets and stoles

Values to \$975 Now \$ 488

precious mink jackets and coats

Values up to \$3500 Now \$1488

Open 'til 9 p.m. Mondays

Michigan 7727

pelta furs

437 W. Seventh (cor. Olive)

Fur Products labeled to show country of origin of  
imported furs

COMMISSIONER'S EXHIBIT No. 13

discount sale

Tremendous Inventory of Selected Furs  
Priced Regardless of Cost!  
Convenient Lay Away Plan  
Charge Accounts Invited

fine deep stoles and clutch capes

Values up to \$250 Now \$ 88

newest capes, jackets and coats

Values up to \$350 Now \$ 128

stoles, capes and spencers

Values up to \$450 Now \$ 188

mink clutches, stoles and capes

Values up to \$595 Now \$ 288

jackets, capes, stoles and coats

Values up to \$750 Now \$ 388

deep mink capes, jackets and stoles

Values up to \$975 Now \$ 488

precious mink jackets and coats

Values up to \$3500 Now \$1488

Open 'til 9 p.m. Mondays

Michigan 7727

pelta furs

437 W. Seventh (cor. Olive)

Fur Products labeled to show country of origin of  
imported furs

## COMMISSIONER'S EXHIBIT No. 14

Pelta Furs consolidates with famous  
wholesale mink manufacturer.

more room required!

complete stock \$250,000.00 exquisite styles  
now on Sale 1/2 price

present unchanged price tags remain on garment

You May Deduct One-Half!!!

Pelta Furs

437 W. 7th St., Los Angeles

MIchigan 7727

The Fur Corner - 7th & Olive

25 Beautifully Styled Genuine Mink Coats and  
Jackets—Ranch, Wild, Pastel and Silverblu—  
Priced at \$1650\*, \$1950\*, \$2950\*, and up to  
\$5000\*. Now Just Half of Ticket Price.

250 Genuine Mink Stoles and Capes—Ranch, Wild,  
Silverblu, Sapphire, Breath of Spring and  
White—Priced at \$198\*, \$298\*, \$398\*, \$475\*,  
\$575\*, \$750\* and up to \$1950\*. Now Just Half  
of Ticket Price.

fur products labeled to show country of  
origin of imported furs

\*Subject to Tax

150 Stroller and Full Length Coats—in Beaver,  
Dyed Ermine, Dyed Muskrat, Dyed Persian  
Lamb and many other types of fur—Priced at  
\$249\*, \$349\*, \$475\*, \$595\*, up to \$1850\*. Now  
Just Half of Ticket Price.



350 Stoles, Capes, and Jackets—in Dyed China Mink, Dyed Ermine, Dyed Muskrat, Dyed Persian Lamb, Dyed Squirrel and practically every other type of fur—Priced at \$98\*, \$149\*, \$198\*, \$298\*, \$398\*, \$475\*, and up to \$950\*. Now Just Half of Ticket Price.

convenient lay away plan  
terms to suit your budget

Never Store Your Furs With Anyone From Whom  
You Wouldn't Buy Them  
For Complete Fur Service  
Call - Pelta Furs - MI 7727  
Lowest Summer Rates

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COMMISSIONER'S EXHIBIT No. 15

After 38 Successful Years  
Pelta Furs

Los Angeles' Largest Exclusive Furrier Quits!

All Advance 1954 Styles, Holiday Gift Furs Now  
At Cost and Below Cost.

\$250,000.00 Inventory Sacrificed  
Entire Fur Stock Must Go!  
at a fraction of original prices!  
Savings are Tremendous!

Liquidated \* \* \* at only \$66

Stoles, Capes, Jackets and Coats in: Dyed Marmot, Dyed Grey Fox (White Squirrel), Grey Persian Lamb Paw, Black Dyed Opossum, Natural Lynx, Natural Raccoon, Blue Fox, Silver Fox, Dyed Squirrel Flank, Dyed Muskrat and a variety of other furs.

Coats, Capes, Jackets, Stoles, Scarfs up to \$5000.00 Now at Slashed Prices!

Liquidated at only \$99

Stoles, Capes, Jackets and Coats in:

Natural Blue Fox, Dyed Marmot, Dyed Squirrel Back, Dyed Muskrat, Dyed Mink, Silver Fox, Dyed Mouton Processed Lamb, Dyed Persian Lamb Paw, Black Dyed Caracul Kid and many others.

Liquidated at only \$144

Stoles, Capes, Jackets and Coats in:

Ranch Mink, Silver Blu Mink, Pastel Mink, Dyed Squirrel, Dyed China Mink, Sheared Beaver, Letout Dyed Marmot, Letout Dyed Muskrat, Black Dyed Persian Lamb, Dyed Squirrel Back (Dyed Brown and Black Caracul Lamb), Dyed Sheared Raccoon and many others.

Selected Fine Furs at Sacrifice Prices

|                                   |            |
|-----------------------------------|------------|
| Letout Ranch Mink Stoles.....     | Now \$ 244 |
| Natural Grey Squirrel Coats.....  | Now \$ 299 |
| Letout Silverblu Mink Stoles..... | Now \$ 333 |
| Letout Wild Mink Stoles.....      | Now \$ 388 |
| Letout Deep Ranch Mink Stoles.... | Now \$ 444 |
| Long Sheared Beaver Coats.....    | Now \$ 499 |
| Letout Ranch Mink Capes.....      | Now \$ 555 |
| Chiffon Dyed Ermine Coats.....    | Now \$ 599 |
| Letout Natural Mink Jackets.....  | Now \$ 666 |
| Ranch Mink Coats.....             | Now \$ 988 |
| Wild Mink Coats.....              | Now \$1160 |
| Starlight Mink Coats.....         | Now \$1498 |
| Silverblu Mink Coats.....         | Now \$1999 |

Plus Tax—Fur Products Labeled to Show Country  
of Imported Furs.

Layaway or Time Plan if Desired

Pelta Furs

Corner 7th and Olive,  
437 W. Seventh St., Los Angeles

Open 'til 9 p.m. Mondays & Fridays

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COMMISSIONER'S EXHIBIT No. 16

pelta's sale of Mink

Manufacturer's Financial Sacrifice!

Many at Cost! Many Below Cost!

Many Marked Regardless of Cost!

mink stoles and capes \$188

Unbelievable values in Natural, Ranch and Pastel Mink. Suitable for any occasion. Luxurious, flattering new styles.

newest mink clutches, stoles and capes \$288

In Ranch, Wild, Pastel, Silver Blue and Breath of Spring Mink. Deep backs, exquisite workmanship.

mink spencer jackets, capes and stoles \$388

Styled to add loveliness to every costume, daytime or evening. Rich, Natural Mink in many mutations, harmoniously fashioned in a variety of new styles.



*Pelta Furs vs.*

Convenient Layaway Plan  
Charge Accounts Invited

Open 'til 9 p.m. Mondays

MIchigan 7727

pelta furs

437 W. Seventh (cor. Olive)

Fur Products labeled to show country of origin of  
imported furs

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[Endorsed]: No. 15184. Transcript of Record. In the United States Court of Appeals for the Ninth Circuit. Pelta Furs, Petitioner, vs. Federal Trade Commission, Respondent. On Petition for Review of an Order to Cease and Desist.

Filed August 13, 1956.

PAUL P. O'BRIEN,  
Clerk.

In the United States Court of Appeals  
for the Ninth Circuit

No. 15184

Commission Docket No. 6297

JACQUES DE GORTER and SUZE C. DE GORTER, as Individuals and as Co-Partners Trading as PELTA FURS,

Petitioners,

vs.

FEDERAL TRADE COMMISSION,

Respondent.

PETITION FOR REVIEW OF ORDER  
OF FEDERAL TRADE COMMISSION

To the Judges of the United States Court of Appeals for the Ninth Circuit:

The petition of Jacques De Gorter and Suze C. De Gorter respectfully shows to the Court as follows:

Nature of the Proceedings

That on February 25, 1955, the respondent, Federal Trade Commission, issued its complaint being Docket No. 6297 against petitioners in which it charged that for several years prior thereto petitioners maintained a course of trade in commerce, among and between the various states of the United States, in that petitioners engaged in the purchase, sale and distribution of fur products which when sold by petitioners were transported by them from

their place of business in the State of California to purchasers thereof located in various places other than in the State of California.

The complaint further alleged that, subsequent to the effective date of the Fur Products Labeling Act on August 9, 1952, petitioners introduced, sold, advertised, offered for sale, transported and distributed fur products in commerce certain of which fur products were misbranded, falsely advertised, and falsely invoiced in violation of Section 3 (a) of the Fur Products Labeling Act and of the Rules and Regulations promulgated thereunder.

The complaint further alleged that, subsequent to the effective date of said Act, petitioners sold, advertised, offered for sale, transported and distributed fur products which were made in whole or in part of fur which had been shipped and received in commerce as "fur products" and "fur" are defined in the Fur Products Labeling Act, certain of which fur products were misbranded, falsely advertised, and falsely invoiced in violation of Section 3 (b) of said Act and of the Rules and Regulations promulgated thereunder.

The complaint then set forth specific acts of labeling, advertising and invoicing claimed to be false and deceptive under the provisions of Section 5 (a) of the Fur Products Labeling Act and Rule 44 of the Rules and Regulations promulgated thereunder, and the complaint then alleges that these violations of the Fur Act and its Rules constituted unfair and deceptive acts and practices in commerce under the Federal Trade Commission Act.



The complaint contained a notice directed to petitioners to appear and to show cause at a Hearing to be held before a Hearing Examiner of the Federal Trade Commission on the charges set forth in the complaint and to show cause why an order should not be made requiring petitioners to cease and desist committing the violations of law charged.

An Answer to the complaint was filed by petitioners in which they denied that they were engaged in interstate commerce although admitting that in a few isolated instances fur products sold in their place of business to purchasers present therein were at the request of the purchasers shipped to an address outside of the State of California.

Petitioners further denied in their Answer that they committed the acts complained of in the complaint, and more particularly, denied that they used fictitious prices as comparative prices, or in advertising reductions and savings in the sale of fur products, and petitioners alleged in their Answer that the word "fictitious" which appeared in Rule 44 of the Rules and Regulations promulgated by the Federal Trade Commission, was improperly and incorrectly defined and construed in the complaint by the attorney who had prepared the complaint.

A hearing on the issues made out by said complaint and answer was had on July 5th and 6th, 1955, at Los Angeles, California, before the Honorable Abner E. Lipscomb, Hearing Examiner, and after the hearing, the matter was taken under submission by said Hearing Examiner.

That thereafter and before said Hearing Exam-

iner made his Initial Decision, petitioners filed Proposed Findings of Fact, Conclusions of Law and a Proposed Order which were adopted in part and rejected in part by the Hearing Examiner.

The Hearing Examiner made and filed his Initial Decision with the Federal Trade Commission on November 18, 1955, a copy of which was served by the Commission on the petitioners by registered mail on December 5, 1955. The Hearing Examiner in his Initial Decision, found that petitioners committed all of the acts complained of in the complaint and concluded that such acts, except those in violation of Rule 44 of the Rules and Regulations, were violative of the Fur Products Labeling Act and constituted unfair and deceptive acts and practices and unfair methods of competition in commerce within the intent and meaning of the Federal Trade Commission Act. Based upon these findings and conclusions, the Hearing Examiner made an Order, in his Initial Decision, that petitioners cease and desist from continuing said acts and conduct, other than those violative of Rule 44, in the sale, advertising, offering for sale, transportation or distribution of fur products in commerce, or in the sale of fur products made of furs shipped and received in commerce.

The Hearing Examiner, having found that petitioners committed the acts complained of in the complaint with respect to Rule 44 of the Rules and Regulations and concluding that such acts, while not violative of the Fur Products Labeling Act, did constitute unfair and deceptive acts and practices and unfair methods of competition in commerce within

the intent and meaning of the Federal Trade Commission Act, made a further order that the petitioners cease and desist from continuing said acts and conduct in connection with the offering for sale, advertising and distribution of fur products in commerce.

Petitioners being dissatisfied with some of said Findings and Conclusions and with the second portion of the Cease and Desist Order made by the Hearing Examiner, and filed by him with the Federal Trade Commission, filed with the Federal Trade Commission on December 9, 1955, their Notice of Intention to Appeal from said Cease and Desist Order.

The attorney in support of the complaint, being dissatisfied with that portion of the Cease and Desist Order made by the Hearing Examiner which in effect held that Rule 44 of the Rules and Regulations was promulgated without authority under the Fur Products Labeling Act, filed his Notice of Appeal from that portion of the Cease and Desist Order.

Briefs were filed, by petitioners and by the attorney in support of the complaint for the Commission, in both Appeals, and on May 11, 1956, the respondent Commission made its Findings of Fact and Conclusions of Law and its Cease and Desist Order in which it ordered petitioners to Cease and Desist from committing the acts alleged in the complaint to be violative of the Fur Products Labeling Act and its Rules and Regulations, not only in connec-



advertised fur products for sale in interstate commerce but only that they advertised fur products for sale in locally published newspapers and that they made no sales in interstate commerce.

3. The Finding that petitioners stipulated that they are engaged in interstate commerce is neither supported by the evidence nor by the stipulation, that petitioners, in the course of their business, are in competition with other firms in commerce.

## II.

That respondent Commission rejected petitioners' Proposed Findings of Fact and Conclusions of Law, particularly Findings numbered III, IV, V, XV, and XVII, which were supported by the evidence.

## III.

That the Finding that petitioners violated the provisions of the Federal Trade Commission Act is immaterial and renders that portion of the Cease and Desist Order denominated C 2 (a), (b), (c), (d), and (e), and C 3, unsupported by the record.

A. Petitioners were not charged with violating the provisions of the Federal Trade Commission Act; they were charged with violating the provisions of the Fur Products Labeling Act and its Rules and Regulations which violations were alleged to be unfair and deceptive acts and practices and unfair methods of competition under the Federal Trade Commission Act, as is required to be alleged by Section 3 (a) and 3 (b) of the Fur Act, in

order to justify the issuance of a Cease and Desist Order.

B. Rule 44, Subdivisions (a) to (g), inclusive, was promulgated by the Federal Trade Commission in excess of the authority vested in it by the Congress by the provisions of Section 8 (b) of the Fur Products Labeling Act.

C. Objections to evidence of acts violative of this Rule, which were made by petitioners at the hearing, should have been sustained.

#### IV.

That the Findings of the respondent Commission that petitioners used "fictitious prices," in advertising comparative prices and reductions in price and savings to be effective, is not supported by the evidence.

#### V.

That the Findings of respondent Commission, that petitioners' advertised comparative prices and savings to be effected, were fictitious, is immaterial and renders that portion of the Cease and Desist Order relating thereto unsupported by the record; the definition of the word "fictitious" as used in the complaint, is not a definition contained in the Fur Products Labeling Act or in its Rules and Regulations or contemplated by the Act, but is a definition coined by the attorney preparing the complaint.

A. That objections, made by petitioners to ques-

tions relating to prices at which petitioners sold their fur products, should have been sustained.

Relief Prayed For

I.

That the Order of the respondent Commission be set aside in its entirety and that another and different Order be made dismissing the complaint; or

II.

That the Order of the Respondent Commission be modified by striking therefrom that portion of the Order denominated C (2) (a), (b), (c), (d), and (e), and C (3); or

III.

That the Order of the respondent Commission be modified by striking therefrom that portion denominated C (2) (a), (b), (c), (d), and (e) contained in the first half of the Order.

IV.

Such other and further relief as to the Court may seem just and proper.

WALLEY & DAVIS,

By /s/ J. J. WALLEY,

Attorneys for Petitioners.

[Endorsed]: Filed July 9, 1956.



[Title of Court of Appeals and Cause.]

APPELLANTS' STATEMENT OF POINTS

To the Clerk of the Above-Entitled Court:

The points on which appellants intend to rely in this court on this appeal are as follows:

1. That the evidence does not support the following Findings of Fact, the Conclusions of Law drawn thereon and the Order of the Federal Trade Commission;

(a) That appellants are engaged in the sale, in interstate commerce, of fur products;

(b) That appellants advertise, for sale in interstate commerce, fur products;

(c) That appellants transport or distribute in interstate commerce, fur products;

(d) That appellants stipulated that they are engaged in interstate commerce in the sale, distribution and transportation of fur products;

(e) That appellants are engaged in interstate commerce within the concept of interstate commerce as used in either the Fur Products Labeling Act or the Federal Trade Commission Act;

(f) That appellants used fictitious prices in advertising comparative prices; reductions in prices and savings to be effected;

2. That appellants are charged in the complaint only with violating provisions of the Fur Products Labeling Act.

3. That appellants are not charged in the com-

plaint with the commission of unfair and deceptive acts and practices and unfair methods of competition under the Federal Trade Commission Act but only under the Fur Products Labeling Act.

(a) No rules or regulations similar to Rule 44 and all of its subdivisions as promulgated under the Fur Products Labeling Act, were ever promulgated under the Federal Trade Commission Act.

4. That the portion of the Order of the Federal Trade Commission denominated C (2) (a), (b), (c), (d) and (e) and C (3) is contrary to law and based upon evidence objected to by appellants on the Show Cause hearing.

5. That that portion of the Order of the Federal Trade Commission denominated C (2) (a), (b) and (c) is contrary to law and based upon a definition of the word "fictitious" not contained within the Fur Products Labeling Act or intended by the Congress.

\* \* \*

Dated: August 29, 1956.

WALLEY & DAVIS,

By /s/ J. J. WALLEY,

Attorneys for Appellants.

[Endorsed]: Filed August 31, 1956.